

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,441

414

CHARLES P. B. PINSON, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

Appeal from a Decision of the
Federal Communications Commission

United States Court of Appeals
for the District of Columbia Circuit

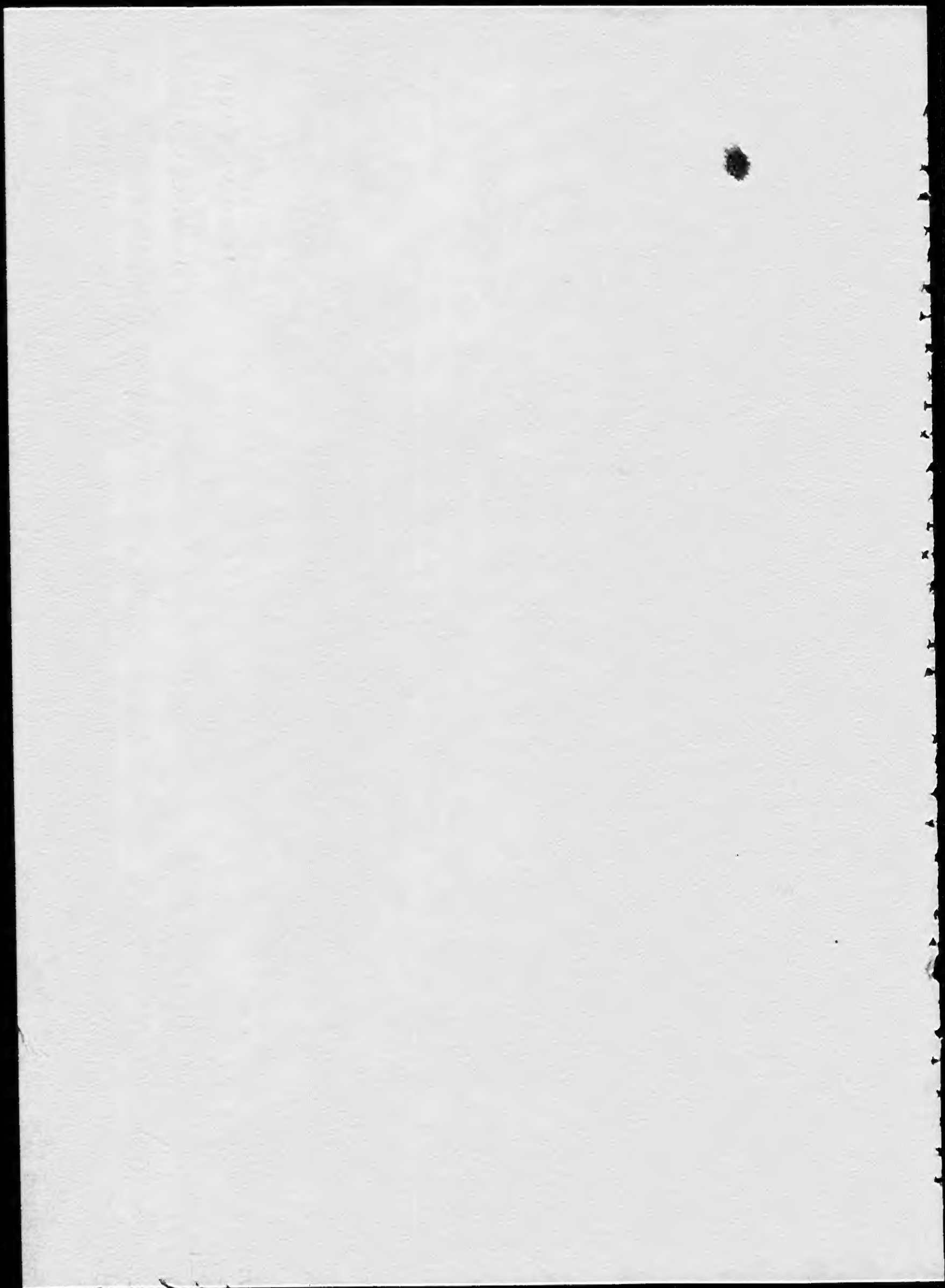
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QUESTIONS PRESENTED

1. Did the Commission arbitrarily, capriciously and without substantial evidence conclude that the appellant was disqualified as a Commission licensee because of the character and reputation of its President?

2. Did the Commission arbitrarily, capriciously and improperly deprive the appellant through its President and only stockholder of the privilege of appearing for itself without legal counsel in the hearing of this cause, although the hearing examiner did authorize one of the other parties to appear personally, even though there was legal counsel of record representing such party?

3. Did the Commission commit prejudicial error or was it an abuse of the hearing examiner's discretion, in permitting one of its employees who had been charged by the appellant with committing improper official acts, to be present during the course of the hearings and to testify therein, even though appellant's counsel had invoked the rule excluding witnesses?

4. Did the Commission employee who was so charged by the appellant have an interest in the outcome of the suit as would reflect upon the credibility of his testimony?

5. Did the Commission fail to afford the appellant a fair hearing when the hearing examiner denied appellant's counsel an opportunity to learn the claims of opposing parties and to meet them?

6. Did the Commission improperly disregard the agreement at the pretrial hearing and disregard the ruling of the hearing examiner upon the question of burden of proof that once a general denial is entered the Commission has the burden of proceeding with its evidence?

(ii)

7. Was the action of the hearing examiner relating to the burden of proof such an act as would mislead the appellant's counsel in the handling of the cause so as to estop the Commission from asserting the appellant had the burden of proof, or was such a ruling by the hearing examiner so misleading that the appellant did not proceed to meet the usual burden of proof and thus constitute prejudicial error on the part of the hearing examiner?

8. Did the Federal Communications Commission have the burden of proof in this proceeding?

9. Were the findings, exceptions and conclusions of the counsel for the Common Carrier Bureau, FCC, and submitted to the Commission and quoted in its order couched in repetitious statements containing conclusions unsupported by testimony or evidence of such inflammatory nature as would influence the judgment of the Commission to the extent that the Commission could not render a fair and unbiased decision upon such findings and exceptions, and thus prevent the appellant from receiving a fair hearing as required by the Administrative Procedure Act? (T 5, §1001 et seq. USCA)

10. Was the Commission arbitrary, capricious and inconsistent in finding that appellant had assumed control of Station KIK 578 contrary to provisions of Section 310(b), Title 47 USC (Communications Act of 1934)?

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No. 17,441

CHARLES P. B. PINSON, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

Appeal from a Decision of the
Federal Communications Commission

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal by Charles P. B. Pinson, Inc., from a decision of the Federal Communications Commission released July 30, 1962, denying the applications of Charles P. B. Pinson, Inc. for renewal of licenses for Stations KIB 386, KIG 289, and KIG 843, and other requests, as well as application of James C. Fields for renewal of license for

Station KIK 578, and alleged misconduct of Pinson as licensee, and ordering the cessation of services (Tr 1311-1320); and Commission decision denying the petition for rehearing, reconsideration and stay, released October 25, 1962.

This appeal is taken pursuant to Notice of Appeal filed on November 23, 1962, with this Court under Sections 402(b) and 402(c) of the Communications Act of 1934, as amended, 47 USC 402(b), 402(c), and Rule 37 of the General Rules of this Court.

The appellant, Charles P. B. Pinson, Inc., is a person aggrieved by actions complained of within the meaning of Sections 402(b)(1), 402(b)(2), and 402(b)(6), of the Communications Act, 47 USC 402(b)(1), (2), and (6).

STATEMENT OF THE CASE

On March 31, 1960, the Federal Communications Commission, by letters directed to Samuel Miller, Esq. and to James C. Fields,¹ designated applications made by these two parties for modification of a construction permit for Station KIQ 516 from 43.22 MC to 35.22 MC, to extend the time for construction, and a subsequent application by Fields to renew the application for Station KIK 578, Tampa, Florida. It was indicated therein that Station KIK 578 was assigned 35.22 MC frequency and, accordingly since there was such a small geographical separation between these two stations, the simultaneous operation of them would not permit the rendition of interference-free service.

Accordingly, the Commission designated both of the aforementioned applications to be heard on a comparative basis. They also consolidated this hearing with applications filed by Charles P. B. Pinson, Inc.

¹ Inasmuch as James C. Fields has not filed a Notice of Appeal in this matter and is no longer considered a party to this appeal, reference to him will be made only insofar as they relate to the issues involved.

Prior thereto applications were made by the appellant, Charles P. B. Pinson, Inc., to renew licenses for Domestic Public Land Mobile Radio Service facilities and for other matters.

Notice was furnished to Pinson and Fields by the Federal Communications Commission, pursuant to Section 309(b) of the Communications Act of 1934, that the Pinson applications were to be set for hearing to consider causes in addition to his application for renewal, etc., by order (FCC 60-645 Mimeo 88810) released June 6, 1960, which specified in part as follows:

"IT FURTHER APPEARING, That Charles P. B. Pinson, Inc. (hereinafter called Pinson) may have assumed the full operational control of station KIK578, which station is licensed to James C. Fields, without having first obtained the Commission's consent therefor, as required by Section 310(b) of our Act and Section 21.29(h) of our rules, and despite actual notice not to do so; and

"IT FURTHER APPEARING, That the obtaining of the license for station KIK578 in the name of Fields may have been in furtherance of a scheme by Pinson and Fields to mislead the Commission into believing that such facility would be operated by Fields rather than Pinson; . . ."

The Pinson applications were thereafter designated for hearing upon the following issues:

"(1) To determine Charles P. B. Pinson, Inc.'s technical and character qualifications to be a licensee in this service.

"(2) To determine whether the statement made to the Commission under oath on March 17, 1958, by Charles P. B. Pinson, President of Charles P. B. Pinson, Inc., relative to the operation of station KIK578 was true and correct when made.

"(3) To determine, in the event the statement mentioned in issue 2 above is found to be untrue in any respect, whether such statement was made with intent to mislead and misinform the Commission.

"(4) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have made false and misleading representations to the Commission and its representatives

relevant and material to the grant of radio authorizations for station KIK578 and material and relevant to the use and operation of such station.

"(5) To determine the basis for, and the extent of, the participation of Charles P. B. Pinson, Inc. or Charles P. B. Pinson in the control and operation of station KIK578 and to determine the legal, financial and other relationships heretofore and presently existing between Charles P. B. Pinson, Inc. or Charles P. B. Pinson, on the one hand, and James C. Fields, licensee of record of station KIK578 at Tampa, Florida, on the other hand.

"(6) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have violated the provisions of Section 310(b) of the Communications Act and Section 21.19(h) of our rules in relation to station KIK578.^{2/}

^{2/} The reference to Section 21.19(h) is a typographical error. It is intended to refer to Section 21.29(h) and this was so understood by the parties (Tr. 14-15).

"(?) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have been found, by competent authority, to have violated any Federal statute relating to income tax or pertaining to wages and hours of their employees.

"(8) To determine, on the basis of the evidence adduced on all of the above issues, whether Charles P. B. Pinson, Inc. should be disqualified for reasons, other than technical qualifications, from being a licensee in this service.

"(9) To determine, in the light of the evidence adduced on the foregoing issues, whether the public interest, convenience or necessity would be served by a grant of the captioned applications."

Extensive hearings were had upon the aforesaid issues in Tampa, Florida, and these were held from February 20-24, 27, 28, March 2, 3, 6-8, 1961; and further hearings were held in Washington, D.C. on April 20 and 21, 1961, when the hearings were opened at special instance of counsel for the Common Carrier Bureau.

Voluminous testimony was adduced at these hearings, for the most part surrounding the actions of the appellant by and through Charles P. B. Pinson, as President and 100% owner of the capital stock of said corporation, concerning the operation of Station KIK 578, Tampa,

Florida, which as aforesaid was utilizing 35.22 MC, the frequency requested by Mr. Rosenson while same had previously been used by James C. Fields, doing business as "POCKET PAGING SERVICES."

At the outset of these proceedings, Mr. Pinson filed a petition for authority to represent himself in these hearings, but an order was rendered by the Commission denying this request (JA). In spite of the foregoing ruling, Mr. Rosenson, who was one of the parties in interest in the application for modification of KIK 578 under the trade name of All Florida Communications Company of Tampa, Florida, was authorized to appear for himself and to reserve the right to call counsel back into hearing should he so desire.

The privilege of appearing in behalf of himself by Rosenson was improperly authorized by the hearing commissioner while the same privilege was not afforded to Mr. Pinson.

In addition, at the time of hearing, the hearing examiner authorized Mr. Arthur A. Gladstone, the Chief of Domestic Radio Division, Common Carriers Bureau of the Federal Communications Commission, to testify as to the results of an investigation he had conducted for a period of two years, to counsel and to be present in the room notwithstanding the fact that counsel for the appellant invoked the rule of excluding witnesses from the hearing room (Vol. 2, Tr. 83-88).

The witnesses for the appellant as well as for the Commission who appeared before the hearing commissioner testified concerning the acts and doings of the appellant prior to the hearing which reflected upon the question of control of the operations of Station KIK 578. It was contended and concluded by the Commission from the statements of witnesses that the entire control of the operations was in Mr. Pinson, and that Fields was the owner in name only (JA).

The credibility of witnesses and the actions of Mr. Pinson was subject to great harangue by Commission counsel. It was the conclusion,

as set forth in the initial decision, of the hearing examiner, The Honorable Forest L. McClenning, on the 9th day of November, 1961, released November 15, 1961 (JA), that statements made by Mr. Pinson under oath were false with respect to measurements of the height of the building in which Station KIK 578 was located, and that control of the aforesaid station had been abandoned by Fields, notwithstanding the existence of a contract for management by the parties thereto, and taken over by Pinson, contrary to provisions of the applicable statutes.

In arriving at this conclusion, the hearing examiner and the Commission failed to give any weight or consideration to the credibility of witnesses produced by the appellant although it was admitted that Fields had sufficient control over the station to shut down its operations within a period of hours after an order to cease and desist was entered by the Commission.

Further, the hearing examiner failed and refused to permit testimony of witnesses to be produced which the appellants, after Motion by the Common Carrier Bureau of the Commission was granted to reopen the hearings for the purpose of impeaching the testimony of Pinson concerning engineering operations he performed upon the building located in Tampa.

The findings and conclusions of the Commission upon the subject of control of the operations of Station KIK 578 were adduced from only a portion of the testimony before the examiner.

The testimony and facts taken at the hearing do not support the findings and conclusions of the Commission and appear to be induced by the inflammatory statements and opinions of trial counsel for the Common Carrier Bureau at the time of this hearing. This was subsequently reported in his findings, accepted and adopted by the Commission in its decision of

It will be noted from a review of the brief in support of exceptions of the Chief, Common Carrier Bureau, to the initial decision (JA),

which was referred to in the Commission order, that throughout the attorney for the Common Carrier Bureau, The Honorable Lawrence M. DeVore, repetitiously concluded throughout the entire 26 pages of his brief that the statements of Fields and Pinson were false and misleading, and were knowingly false and misleading at the time they were made, and that they were made with the intent of deceiving the Commission. These statements were his conclusions and should have been set forth factually so that the Commission could arrive at such conclusions, if warranted.

The hearing examiner and the Commission (JA) found that the testimony adduced at the time of the hearing showed that Mr. Pinson had a reputation in his community for honesty and good character; however, qualifying such condition with:

"Such a general character evidence can hardly be controlling, however, in view of the specific demonstration in this proceeding of a willingness to deceive a governmental regulatory body to achieve private ends."

Further, it was noted the applications to renew licenses for the operation of the stations previously licensed to Charles P. B. Pinson, Inc., KIG 289, St. Petersburg, Florida; KIG 843, St. Petersburg, Florida; KIN 652, Jacksonville, Florida; and KIB 386, Tampa, Florida, were denied by the order of the Commission (JA) as well as the decision of the hearing examiner. The hearing examiner concluded that:

"Refusal to renew the licenses for stations KIG289, KIB386, and KIG843 will deprive the public of existing services which the evidence of record herein establishes is utilized and has been satisfactory. Additionally, Pinson, Inc. here proposes to improve the technical phases of the service of stations KIG289 and KIG843 and to bring new communication services to the cities of Jacksonville and Clearwater, Florida. Civic Consciousness is shown in the operation of the facilities of Pinson, Inc. in the free telephone answering service provided Christ Methodist Church in St. Petersburg and the Florida Nurses Association. That Mr. Pinson's general character and reputation in the community are good is fully supported by the record evidence. . " (JA)

Even though the aforesaid was concluded, the Commission denied the renewal based upon other considerations which were not at issue in the applications as originally filed by Pinson, Inc., which would thereby constitute the addendum of new material.

The modification of the issues by the order of the Commission upon the appellant's application for construction and renewal of existing licenses constituted additional acts of adding new matter and changed the burden of proof and of going forth with the evidence which is contrary to statutory requirements.

The order of the Commission reflects that the testimony pertaining to the alleged false testimony given under oath by Mr. Pinson stated:

"... we think it appropriate to note that considerable ambiguity exists in the record as to the extent to which Pinson claimed to have participated in the measurements, and to what extent others observed such participation... the consent judgment involving the Federal wages and hours law appears to have merely enjoined Pinson from future violations and does not include a finding of past violation. Finally, we cannot conclude that Section 21.109(b) of the Rules was violated by Pinson's action in replacing a substandard antenna... The obvious purpose of the rule is to preclude an operation inconsistent with the license rather than a correction thereof."

In view of this decision by the Commission, it appears that the testimony and evidence being utilized to deprive Pinson, Inc. of further operations is predicated upon testimony which was admittedly ambiguous by the Commission and consequently was not substantial evidence, and, therefore, to prohibit the renewal of licenses for Stations KIB 386, KIG 289, and KIG 843 was not supported by evidence deemed substantial.

Inasmuch as James C. Fields has declined to proceed with the appeal and he is the owner of the duly issued license for KIK 578, the propriety of the ruling of the Commission in this regard is now moot.

STATUTES AND RULES INVOLVED

The relevant portions of statutes and of rules and regulations of the Federal Communications Commission are set forth in the Appendix.

STATEMENT OF POINTS

1. The order of the Federal Communications Commission disregarded the substantial evidence in the record by holding that applicant, James C. Fields, was not entitled to renewal of his license because of alleged violation of 47 USC 310(b).
2. The Federal Communications Commission ignored the substantial evidence and testimony in concluding that the appellant's character was such as would not entitle him to renewal of licenses existing.
3. The Federal Communications Commission was arbitrary and capricious in failing to impose the burden of proceeding with the evidence upon the Commission after determining the qualifications of the appellant upon his applications for renewal of existing licenses.
4. The Commission illegally imposed upon appellant the procedural burden of coming forth with evidence that appellant or some one of its representatives had a specific intent to mislead the Commission.
5. The Commission committed prejudicial error in accepting and considering the testimony and documentary evidence procured and/or introduced into evidence by one of its employees who was obviously prejudiced and whose acts in procuring documentary evidence constituted a violation of the appellant's constitutional privileges.
6. The Commission's conclusions are not rational results of the findings of fact.

SUMMARY OF ARGUMENT

The argument is divided into three parts for the purpose of this appeal.

Briefly, Point One deals with the determination of the Commission in finding that the appellant and one James C. Fields disqualified themselves as Commission licensees by attempting to mislead the Commission and conceal the true facts surrounding the control and ownership of Station KIK 578, Tampa, Florida. It was concluded that such acts and undertakings were premeditated and false when undertaken. The presiding examiner did not find such to be the case, but ruled that certain other acts such as violation of the Wage and Hour Laws and false testimony as to engineering data at the site of Station KIK 578 antenna did disqualify them. These conclusions were discounted by the Commission.

The Commission, through the adoption of the findings contained in the Initial Decision of the trial examiner, recited numerous instances concerning the question of transfer of control of Station KIK 578 from Fields to the appellant contrary to the provisions of 47 USC 310(b). The Commission's findings of control pertained solely to delegable clerical and menial duties, performed by the appellant with the knowledge of Fields and pursuant to a contract which recited the retention of the "ultimate responsibility" and which ultimate responsibility Fields did exercise when he took the station off the air pursuant to a prior Commission order.

In Point Two of the argument it is established that the burden of proof was shifted to the Commission when appellant's construction permits applications, applications for renewal were enlarged by the petition of the Commission to include accusatory statements reflecting upon the conduct and character of the appellant for truth and veracity in dealing with the renewal application for Station KIK 578. The appellant established by testimony his character qualifications for renewal of his

licenses and for modifications, but thereafter he was called upon by the Commission to establish his character qualifications upon an application in which he had no interest, other than as an employee of the owner.

The conclusions of the Initial Report and the order of the Commission were in direct conflict with each other as to conclusions and facts deemed material to the result to be achieved. Both arrived at the same result, but based upon the same record contrary findings were made. The decisions are supported by conflicting testimony and evidence and according to the requirements of 5 USC 1006 (Administrative Procedure Act), before a decision can be properly rendered by any administrative agency, it must be supported by substantial, relevant testimony having probative value. The Commission failed to sustain the burden of proof and to produce evidence of a substantial basis.

In Point Three the appellant establishes that the Commission failed to afford a fair trial by an impartial trier of facts. The testimony of the appellant reflected that at one time he had contacts with a Commission official, and that thereafter, by cavin and guile the said employee deceptively discussed the various phases of the investigation made by him, and after acquiring statements and documents deemed necessary, informed the appellant of the purpose of his investigation.

Based upon these acts, the appellant then made several accusations of improper conduct concerning this employee to Commission. The Commission thereafter vindicated the acts of this employee and then permitted him to appear as a witness against the appellant. During the trial the trial counsel for appellant invoked the rule of segregating the witnesses and the presiding examiner went to the extent of not only permitting this employee and witness to be present, but also he allowed him to designate himself as counsel of record, and thereafter he was allowed to testify against the appellant.

The presiding examiner further authorized the admission of certain documents into evidence which this Commission employee had procured without the consent of the appellant.

The presiding examiner after hearing the testimony as to the improper and illegal procurement of such documents, failed to recognize the constitutional improprieties which it is his duty as a fair trier of facts to protect, and also to recognize the methods of procuring evidence from other witnesses utilized by this employee.

The credibility of the testimony of this witness was the subject of questionable veracity from the outset. The fact that this witness had no animosity toward the appellant in spite of the attacks made upon him and his character, the fact that an attack was made should have been a warning signal. A normal human being could not be anything but influenced and to indicate he was not prejudiced seems quite unbelievable. If this man would make this statement, as he did, it puts in question all of his other testimony. He was the key Commission witness, and his testimony should have been regarded with caution or not used at all in view of the Commission's claims of corroboration by an inferior employee who worked directly under him.

These points and the acceptance of this testimony, and other related activity, resulted in not affording a fair trial to the appellant, and constituted prejudicial error.

ARGUMENT

I

The Conclusion of the Federal Communications Commission that Appellant, James C. Fields, Was Not Entitled to a Renewal of His License Because of Alleged Violation of 47 USC 310(b) Is Not Supported by Competent and Substantial Evidence.

When the Federal Communications Commission grants a license to a person for the operation of a station, one of the duties placed on the

licensee is the duty not to transfer or assign his license without the prior consent of the granting board. The reason for this requirement is to enable the Commission to control the character and qualifications of those people operating under the regulations of the Commission as determined by Congress.

To insure obedience to this requirement, Congress has enacted as an important part of the delegation of authority a specific clause elucidating this requisite. This is Section 310(b), found in Title 47 of the United States Code, and reads as follows:

"No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."

Under the procedure of the rules of the Federal Communications Commission, it is the duty of the hearing examiner to hold a hearing, listen to witnesses and counsel, and to decide the issues presented to him, such decision being based on the evidence which he has heard. This decision is then appealable to the Commission in Washington, D.C. where the prior decision is weighed and a decision rendered.

There are certain guides used by the Federal Court to determine the validity of the decision of the Commission. The foremost of these is the competent substantial evidence rule, which means that the decision of the Administrative body must be in accord with the competent and substantive evidence presented in the initial hearing (5 USC 1009). Abuse of this rule will result in a remand to the administrative body.

In applying this competent substantial evidence rule to a case involving an alleged violation of the quoted Section 310(b), the Federal Communications Commission has made several general statements. These statements are pertinent as they serve as a guide to determine

whether the stated rule was followed in the present case. In the case of United States Broadcasting Corp., et al., 2 FCC 208, the Commission denied an application for renewal and in denying remarked that:

"Complete supervision and control over programs, including careful examination of their contents, directly affects the rendition of a public service. The right to determine, direct, supervise, and control programs is inherently incident to the privilege of holding a station license. In fact, the right becomes a responsibility of a licensee, as he must be held to strict accountability for the service rendered."

In the decision of In re Morris, 2 FCC 269, the Commission stated, in refusing a renewal application, that:

"The Commission considers . . . the fact that the applicants have no control over the programs to be transmitted from their studio, and can exercise no censorship over them . . ."

The case of Voliva v. WCBD, Inc., 39 NE 2d 685, 313 Ill. App. 177 (1942) cites FCC docket number 5478, In re Bellingham Broadcasting Co. as holding that:

"Licensees must necessarily be held responsible for all program service and may not delegate their ultimate responsibility for such to others."

Further, prior decisions have held that Section 310(b) objectives are not met by virtue of a negative control (Master Broadcasting Corp., 6 RR 621), and that special circumstances rather than formal control may indicate a violation of this section (Town and Country Radio, Inc., 15 RR 1035).

Thus, the Commission has enumerated several situations which are determinative of a transfer of control. First, the licensee has the responsibility to exercise his right of control, supervision, and censorship, but this does not mean that he cannot delegate any of the tasks and menial duties connected with the operation of a station. Rather, the responsibility which cannot be transferred is the "ultimate responsibility" or, in other words, the responsibility of being held "to strict accountability for the service rendered."

This is the type of control which is necessary in the eyes of the Federal Communications Commission to meet the burden of proof placed upon an applicant charged with violation of Section 310(b).

It then follows that anything short of a showing of control of the ultimate responsibility will be sufficient to show a violation of Section 310(b), and for the Commission to be sustained in a finding of a violation, they must show to the satisfaction of the court that there was competent substantial evidence to justify such a decision. By this it is not meant that there is a presumption against their decision, but rather that if it is shown to the court that their decision is not supported by competent substantial evidence indicating a transfer of the ultimate responsibility of control, their decision will be reversed.

The issue is then, was the hearing examiner's initial decision, which was approved by the Commission, refusing to renew the license of James C. Fields for an alleged violation of Section 310(b), supported by competent substantial evidence. The only way to determine this is by comparing his decision with the evidence and testimony presented at the hearing.

First of all, the hearing examiner states in his conclusion that:

"The bare assertion of reservation of control in a contract is not sufficient, however, to establish compliance with the applicable provision of law and the Commission's Rules."

In this instance, there was a contract between Fields and Charles P. B. Pinson, Inc., executed on March 13, 1958, modifying a prior contract executed on November 4, 1957, in which it was provided that Pinson, Inc., as an employee of Fields, was to perform the actual physical tasks pertaining to the operation of the station and was to furnish qualified operators for this purpose, subject to the supervision and control of Fields. This is the "reservation of control" referred to by the hearing examiner. Concededly, a mere assertion of control would not be sufficient, but in this case there was much more than a mere recital; there

was actual, manifest, authority rendered by Fields, to which authority and control the employee, Pinson, Inc., responded without question. Perhaps the most overt example of this control is seen when Fields received the FCC telegram directing him to take Station KIK 578 off the air. He immediately telephoned the office of his employee and directed the office to remove the station from the air (R 964). This is completely corroborated by the operators on duty when Fields called (R 1814-1815). Would a person without authority, without control, be so readily obeyed without question on a matter not only concerning the control of the station, but concerning the very economic and corporeal existence of the station?

The hearing examiner recognizes this is an element of control (I.D. 28) but says that it is the "only evidence of affirmative action on the part of Mr. Fields in the construction or operation of this station" (I.D. 28). This statement is not supported by competent substantial evidence, or even supported by a shadow of evidence.

In substantiation of this quoted statement, the hearing examiner goes on to say that, "Mr. Pinson assisted in preparation of the application for this station" (I.D. 28). In his findings of fact, the examiner states in regard to the application that, "The application was prepared in the offices of Pinson, Inc., with Mr. Pinson preparing the initial engineering portions and assisting in the preparation of the other portions" (I.D. 8). These "facts" do not illustrate the true picture of the relationship. It is true that the forms were filled out in Pinson's office, but after all, Fields had no office or facilities. It is also true that Pinson assisted in portions of the application, but what would be more natural between related individuals on very friendly terms with a common interest and background? It is stated that Pinson prepared the initial engineering portions. (Tr 991, 992, 1947-1949)

The examiner obviously failed to consider all the evidence. The full import of all the evidence completely negates any possibility of any

conspiracy to transfer control and the examiner's statement is without support of competent substantial evidence.

Next in his conclusions, the hearing examiner says:

"All equipment for the station was purchased by and billed to Pinson, Inc. with actual ownership of the receivers remaining in Pinson, Inc. for a period in excess of one year. Rental arrangements for the installation were made by Mr. Pinson. Installation of the equipment was ordered by Mr. Pinson. The receiver rental charge during the period of their ownership by Pinson, Inc. went directly to that firm. Maintenance of the receivers was provided by Pinson, Inc."
(I.D. 28)

As for the first of these conclusions, the testimony is to the contrary. At Tr. 1002-4 the record discloses that while Pinson paid for the transmitter upon delivery (because Pinson was present when it was delivered) Fields immediately reimbursed Pinson by check, thus actually paying for the transmitter. It is true that the ownership of the receivers remained in Pinson, Inc. for one year, even though the contract between Pinson, Inc. and Fields provided that Fields was to furnish these receivers. The fact remains, however, that Fields did reimburse Pinson, Inc. for its expenditure for these receivers. In effect, the fact that Pinson, Inc. first procured the receivers is nothing more than an advancement of money or a loan from Pinson, Inc. to Fields since Fields was contractually bound to pay for them.

The next element referred to by the examiner is the fact that oral arrangements for the installation were made by Mr. Pinson. This is true, but again it does not reflect the true situation. In actuality, Mr. Pinson did make the arrangements for installation, but at the direction and under the authority of Fields. Fields told Pinson, as employer to employee, to have Radio Service, Inc. make the installation (R 1001).

The examiner then refers to the fact that the receiver rental charge during the period of ownership by Pinson, Inc. went directly to that firm. What the examiner failed to report was that the salary paid

to Pinson, Inc. was in the nature of a commission, a percentage, and the agreement for the payment of the commission was that until Fields reimbursed Pinson for the price of the receivers, Pinson was to receive the monies as part of his commission. This is not a transfer of control, and to allege that it is, is to go beyond the support of the competent substantial evidence.

Further, Fields was furnished periodic settlement sheets showing application of customer money received toward payment of the transmitter purchased under conditional sales contract and toward the cost of the receivers (R 959). Fields reflected this as income and paid taxes on revenue from customers (R 960).

Last in this series of conclusions which the examiner alleges show a lack of control by Fields is the statement that maintenance of the receivers was provided by Pinson, Inc. However, what is meant by "maintenance . . . was provided by Pinson, Inc.?" This infers that Pinson, Inc. paid for the maintenance, while in fact as the evidence shows, Pinson, Inc. merely made the contract for the maintenance while the cost for station KIK 578 was paid by Fields.

In every instance the above quoted alleged elements of control are completely explainable by reference to the evidence; evidence which the hearing examiner obviously failed to consider. His determination on these factors is not supported to any extent by competent substantial evidence.

To further support his conclusion that Fields had transferred control of the station to Pinson, Inc., the hearing examiner refers to the January 3, 1959, amendment to the agreement of employment between Fields and Pinson. The examiner states that, "Duties and responsibilities were also changed to show that Pinson, Inc. was to render all bills, collect all monies due and to make an accounting thereof to Mr. Fields at the end of each six-months period" (I.D. 10-11) and that,

"Active participation by Mr. Fields is not shown in any phase of the operation of station KIK 578. All advertising was done in connection with Pinson, Inc. services. The telephone listing was continuously under the services of Pinson, Inc. All billing was done by Pinson, Inc. initially under its own name and after April 1, 1959, under Mr. Fields' name. All bills and delinquent accounts were collected by Pinson, Inc. and the money so collected commingled with the funds of Pinson, Inc. until February of 1961. Even then there was a comingling of funds and only Pinson, Inc. could draw on the account established. . . All expenses of operation were paid by Pinson, Inc. Subscribers brought their receivers to the offices of Pinson, Inc. for battery replacements or repairs, Mr. Fields having at no time maintained a separate place of business. The only solicitation of subscribers to the service made by Mr. Fields was to one or two of his friends. Mr. Fields has at no time maintained station records relying wholly on Pinson, Inc. to perform this service." (I.D. 28)

It is to be noted that the large majority of the elements relied upon by the hearing examiner in this quoted portion of his conclusions are merely clerical and menial tasks. Does the examiner expect Mr. Fields to perform all the duties connected with the operation of the station? No one individual could possibly do that. What is more natural than to delegate these clerical tasks? Almost every business has a bookkeeper, an accountant, a filing department, a secretary that sends out bills. The fact that Mr. Fields selected Mr. Pinson's firm to do this is certainly of no significant probative value to show a transfer of control. If Mr. Fields had hired someone else other than Pinson, Inc. to do these clerical tasks, would the situation or conclusion be any different? No. These duties are normally and expectedly delegated, and the fact that someone already working for Mr. Fields was selected to perform the duties makes no difference. The conclusion drawn has no weight against the contrary competent substantial evidence.

It is worthy to note that the 1959 decision of the Commission, styled In re Application of Standard Broadcasting Corp. et al., 29 FCC 1129, where the Initial Decision is reported, the hearing examiner states at page 1181:

"Harris asserts that the managerial activities of Rosen while employed with station WPTR at Albany constituted an illegal assumption of control over the station by him, in violation of section 310(b) of the Communications Act. Furthermore, Harris contends that the failure of Rosen to disclose to the Commission the arrangements which resulted in his exercise of "absolute control over station WPTR" and his "knowing participation in a violation of section 310(b) of the Act" are sufficient to disqualify Standard in this proceeding. Harris bases this contention on the following facts: That, when Rosen was the manager of WPTR during the period 1954-56, he set all operational policies without consultation with the board of directors; had complete authority to hire and fire personnel; changed network affiliation and revamped the programming without prior consent of the board of these moves; and changed the station's rate card with only slight consultation with the ownership. . .

"It is true that such broad authority over the operations of station WPTR during Rosen's managerial term involved an illegal transfer or exercise of control over this station. In the first place, it is apparent that a tight rein was held over the station's financial affairs by the ownership to whom a monthly fiscal report was rendered by the station's bookkeeper. Equally clear is the fact that a member of the family corporation which owned the station visited Rosen at fairly regular and frequent intervals, and otherwise kept in touch with Rosen by telephone. This continuous liaison resulted in discussion between them on such matters as changing the rate card and the removal of the station from the Ten Eyck Hotel location. The lack of extensive talk about station matters does not alter the fact that Rosen's conduct of the station's affairs were performed under the watchful eye of a representative and principal of the station's owner. Thus, it may be inferred that the important decisions made by him had the tacit approval of the station's ownership. In short, Rosen's relationship to station WPTR was never more than that of an employee who managed its operation subject to the oversight of the owners, and the facts do not substantiate Harris' contention that Rosen assumed 'control' over the station in contravention of section 310(b) of the Act." (emphasis supplied)

This Initial Decision was affirmed by the Commission at 29 FCC 1116. The quotation above is a good, clear indication of the type and extent of control required of the licensee under Section 310(b) and

illustrates the requirement stated in Voliva v. WCBD, supra, that the licensee ". . . may not delegate their ultimate responsibility. . ." (emphasis supplied) Applying the facts of the quotation above from In re Application of Standard Broadcasting Corp. et al., supra, and the quotation next above to the facts at hand, the irrefutable conclusion is that the hearing examiner did not meet the requirements of the competent substantial evidence rule.

Continuing his conclusion, the hearing examiner states that, "Mr. Fields' testimony herein shows that he has at no time had a continuing personal interest in either the construction or operation of Station KIK 578. . . Particularly pertinent is the fact that for a period of almost two years as of the date of this testimony Mr. Fields had very rarely even come to Tampa, having decided it was an inconvenience to him and 'silly' to have to personally check on the operations of the station" (I.D. 28-9).

It is true that Fields did not come to Tampa very often, but he did come occasionally (R 1078-9). Fields was also furnished periodic settlement sheets showing the application of customer money received toward payment of the transmitter purchased and toward the cost of the receivers (R. 959). Fields also had access to accounts kept by the Pinson company pertaining to Station KIK 578 and there were periodic written accounting settlements submitted by Pinson, Inc. (R 1061). Fields is familiar with the installation and with the station log, and has seen to it that the requirements of the applicable rules of the Communications Act were adhered to. He further instructed Pinson not to allow any employees to "get out of line" in carrying on the operation of the station. He reminded Pinson that he, Fields, is responsible for the operation of the station (R 1078-9).

All of this completely belies any possible conclusion that Fields had no "continuing personal interest" (I.D. 28) in the operation of the station. The conclusion of the hearing examiner has absolutely no

competent substantial evidence to sustain it. To quote the Standard Broadcasting Corp. case cited above, ". . . Thus, it may be inferred that the important decisions made by him (the manager) had the tacit approval of the station's ownership. . ."

The final area considered by the examiner is that of who has contributed the most to the station, Fields or Pinson. He concludes that Fields has an investment of only \$444.59, and then says that considering Pinson, Inc.'s investment in the receivers alone, the investment of Pinson, Inc. is substantially in excess of Fields' investment. The evidence is completely to the contrary. First of all, the evidence shows that Fields reimbursed Pinson, Inc. for the receivers. Secondly, and this is the only other financial element considered by the examiner, the examiner concludes that Pinson, not Fields, paid for the initial engineering report. This is absolutely refuted by not only the testimony of Fields and Pinson, but also by the very man who got paid (R 1948 and R 2036).

Then the hearing examiner concludes that Mr. Fields had transferred control of Station KIK 578 to Mr. Pinson and Pinson, Inc. contrary to Section 310(b).

Without further elaboration or citation, it is manifest that on every point enumerated the hearing examiner and the Commission failed to follow the competent substantial evidence before them.

It is therefore submitted that the decision of the Federal Communications Commission affirming the decision of the hearing examiner that James C. Fields violated Section 310(b) of Title 47 United States Code be reversed.

Furthermore, the conclusion of the Commission in rejecting this decision and determining that the ownership of the license in Fields' name was a mere subterfuge upon the same testimony is likewise deemed improper and erroneous. The findings of the Commission that (a) the statement contained in Fields' original application and the claim

in Fields' letter of May 27, 1957, (b) that he intended to manage the station, (c) the contract of March 13, 1958 for payment of transmitter and receivers, and (d) there was no agreement between Pinson and Fields, was not based on the evidence and testimony adduced at these hearings. The disagreement between the hearing examiner and the Commission in this respect clearly establishes that one or more conclusions could be drawn from this hearing and was not sufficient to satisfy the burden of proof required by the substantial evidence rule.

The conclusion of the hearing examiner at page 30, states in part:

"It is accordingly concluded that the statements of Mr. Pinson and Mr. Fields dated March 17, 1958, insofar as can be ascertained from the record herein, were substantially true and correct when made."

Therefore, it is the appellant's contention that none of the statements or documents were submitted to the Commission knowing the contents were false and having this knowledge, to influence the actions of the Commission.

Counsel for the Common Carriers Bureau expounded very thoroughly in attempting to establish the various elements of control, and on reciting his interpretation of the responses of the appellant was critical of the vague answers given to questions. He utilized inflammatory and repetitious conclusions, but failed to inform the Commission that vagueness and reluctance of the principal witness would not bar the issuance of a license. It was said in FCC v. Allentown Broadcasting Co., App. D.C. 1955, 75 S.Ct. 855; 349 U.S. 358, that:

"Reluctance, evasiveness and lack of candor of applicant's principal witness would not be a bar to Commission's grant of license for a broadcasting station."

II

The Commission Illegally Imposed the Burden of Proceeding with the Evidence Upon the Appellant After Qualifications of the Applicant for License Renewal Had Been Determined.

Charles P. B. Pinson, as president of Charles P. B. Pinson, Inc., made application for construction permit, a modification of a construction permit, and for renewal of license for Stations KIB 386, KIG 289, and KIG 843, pursuant to provisions of 47 USC 308. Thereafter, the Commission by order released June 6, 1960, designated the above applications for hearing in a consolidated proceeding with James C. Fields and Alan Rosenson. This order required among others, determination of nine specific items therein contained. These specifications had no bearing to determine whether the "technical and character" qualifications of the said Charles P. B. Pinson entitled him to the renewal of the license. In effect the addition of these specifications put in issue further factors of an accusatory nature upon Pinson's technical and character qualifications, and whether he had made false and misleading statements pertaining to the grant of the renewal of a license for Station KIK 578 (Fields) for which he had made no application.

It is the contention of the appellant that the burden of proof specified in 47 USC 309(b) was shifted from the applicant to the Commission. It is stated in 47 USC 309(e) as follows:

"... The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or enlarge the issues, such burdens shall be determined by the Commission." (Emphasis supplied)

The phraseology of the order released June 6, 1960, indicates that the hearing thereon was predicated upon the statutory proceedings under Section 309(b), supra, but by virtue of the new matter specified in this order, the result of the proceedings, the issues were enlarged and must turn upon the provisions of Section 309(e) which states:

"If, in case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing. . ."

The objections of the appellant are not directed toward the power of the Commission, under the authority of Section 309(b), to inquire into and investigate the character of the applicant for renewal. However, the Commission may not be permitted under the guise of the authority of this section to shift the responsibility of proceeding with the evidence.

At prehearing conference at Washington, D.C. on November 16, 1960, the parties agreed and it was stated by the presiding examiner:

"Well, at this point then we will go to the question of hearing dates, leaving the matter as to the method of proceeding initially to consultations between counsel to see if it can be worked out to their mutual satisfaction; if not, of course, we would have to call another conference and the examiner would establish the procedure to be followed." (Tr. 15)

Thereafter, at time of hearing, the presiding examiner said:

". . . , but technically at no point is the burden or proof on the Commission in the proceeding. However, once a general denial is entered then the burden of proceeding with the evidence rests on the Commission counsel, and if they do not adduce satisfactory evidence, of course, the general denial stands." (Tr. 539)

and further it was stated by the presiding examiner:

". . . Viewed from the practical standpoint, the burden is on the Commission to sustain the charges; that is correct." (Tr. 540)

In view of the foregoing, the testimony which thereafter proceeded and adduced by the parties left the matter in doubt. So much so as to one issue upon the findings, the Initial Report of the examiner ruled one way concerning the actions of the appellant while based upon the same record, the Commission ruled another. In fact there were many instances concerning the issues revolving around the character which were doubtful.

Concerning the question as to whether Mr. Pinson had violated a federal law by taking a Consent Judgment in a Wage and Hour proceeding, the Commission adjudicated that such an act was not a blemish on Pinson's character, while the hearing examiner and trial counsel for the Commission made a great thing of it. Further, the hearing examiner ruled that the acts of Pinson in connection with his testimony on the engineering measurements as to the location of the Fields antenna were disqualifying, while the Commission ruled there was such a question in its mind that the ambiguous testimony was inconclusive.

Therefore, it is the conclusion of the appellant that the Commission has failed to sustain the burden of proof in this cause. The substantial evidence rule is applicable to the decisions and actions of the Federal Communications Commission, and it is stated in 5 USC 1006(c) (Administrative Procedure Act), as follows:

"c. Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. . . and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portion thereof as may be cited by any party and as supported by and in accordance with reliable, probative and substantial evidence." (Emphasis supplied)

Substantial evidence is judicially defined as "such relevant evidence as adequate to support a conclusion, and such evidence must be sufficient to justify a refusal to direct a verdict, if trial were before a jury" (U.S. Health Club, Inc. v. Major, DC NJ 1960; 182 F.Supp. 759). It is further stated that if the Federal Communications Commission acts within the area prescribed by this Act (47 USC 151, et seq.) and its determination is supported by substantial evidence there is no ground for judicial interference.

Accordingly, it would appear that the shifting of the burden of proof and the proceeding with the evidence is upon the Commission. The testimony adduced has so confused the trial examiner and the Commission that they can agree upon only one thing; that is, the result.

The basis for reaching this result is not established by either and is not the rational result of the findings of fact. There has been a presentation to the Commission of a series of acts, one of which by itself is inconclusive of any decision, but which if reiterated and repeated over and over again as was done by trial counsel by his inflammatory, repetitious conclusions based upon no testimony, achieved a result. It must be borne in mind, the burden to establish these nebulous and unspecified charges is upon the Commission, which it has failed to do by substantial evidence.

III

The Commission Did Not Afford the Appellant a Fair Hearing, and Committed Prejudicial Error in Receiving Testimony of a Federal Communications Employee Who Was Prejudiced Against the Appellant, and in Receiving into Evidence Documentary Evidence Which Was Illegally Acquired in Violation of Appellant's Constitutional Privileges.

The Honorable Arthur A. Gladstone was acting as Chief of the Domestic Radio Facilities Division, Common Carrier Bureau of the Federal Communications Commission, which is responsible for processing applications and issuing licenses for domestic radio operations of common carriers when he had contact with Charles P. B. Pinson. In processing applications, contact was had on several occasions with Mr. Gladstone by the appellant, and after several times, Mr. Gladstone made his appearance in the Tampa area upon receipt of complaints about Pinson, and conducted an investigation with B. E. Harrison on March 30, 1959 (Tr. 1332). Shortly after the termination of this investigation Mr. Pinson communicated with the Commission and raised certain matters about the personal conduct of Mr. Gladstone. By letter dated July 7, 1960, the Commission rejected the "unsupported allegations, insinuations and charges" with respect to Mr. Gladstone (JA).

At the time of the hearing of this cause in Tampa, Florida, in February and March of 1961, and when counsel for the appellant invoked

the rule segregating witnesses (Tr. 82), Mr. Gladstone was permitted by the presiding examiner to be designated as counsel of record (Tr. 86, 87) and permitted him to sit in during all sessions of hearings, and thereafter to testify.

The testimony of Mr. Gladstone was thereafter elicited and obtained; he was the vehicle for numerous admissions, documents and testimony which were deemed of vast importance by the presiding examiner in his Initial Decision, which thereafter was adopted by the Commission.

During the investigation mentioned above and prior to hearing, Mr. Gladstone and Mr. Harrison contacted Fields, Pinson and other employees for two days and then they finally decided that they would formally apprise these parties of the purpose of their investigations (Tr. 1340) and thereafter both of the parties were interrogated further as were the employees of the appellant.

On March 30, 1958, Gladstone appeared in the appellant's office, proceeded to procure documents from employees of appellant (Tr. 1727-1755), caused one employee to become upset and highly nervous (Tr. 1967), approached another employee of the appellant, Heidt, who was subsequently subpoenaed by the Federal Communications Commission, and stated to this employee that he "would just as soon" Heidt did not contact Pinson about their conversations (Tr. 2238), and caused one employee to attend hearings without a subpoena upon threats of official action.

The prejudice which Mr. Gladstone must have experienced due to the allegations of misconduct by him, the subsequent vindication of his acts, would have substantial bearing upon the credibility of the testimony of Mr. Gladstone at the hearing. It is true he claimed no resentment against Pinson (Tr. 1500-1501). This is hardly believable from any human being.

Notwithstanding, Mr. Gladstone did admit he procured documentary evidence from an employee of Pinson without first having the authority of Mr. Pinson, and made a survey of the office. The right of inspection is granted Commission Staff by 47 USC 303(n) to ascertain conformity. However, the constitutional prohibition against unreasonable search and seizure is just as applicable in this situation as in a criminal prosecution without the consent of the party or some authorized personnel, a search warrant, or a subpoena duces tecum.

Accordingly, it is concluded that Mr. Gladstone at the time of the investigation evidenced no regard for the constitutional privilege and if he would go this far to achieve his ends, there is some reason to believe that he might give testimony which would be under suspicion. To put full and complete reliance upon his testimony, though corroborated by a fellow employee working for him and directly responsible to him, puts doubts on the weight and sufficiency of the evidence adduced by him. The material obtained by Mr. Gladstone in these proceedings was subject to a Motion to Quash and this constitutional abridgement is hereby invoked.

In Cella v. U.S., C.A. 7 1953, 208 F (2d) 783, the court said:

"In administrative hearings, the hearing examiner has wide latitude as to all phases of the conduct of the hearing including the manner in which the hearing will proceed."

It is an amazing abuse of discretion for a presiding examiner to accept documents procured under these illegal means. The trial examiner should have recognized this infringement sua sponte and rejected the documents instead of accepting them into evidence (Tr. 1759).

It was stated in NLRB v. National Paper Co., C.A. 1954, 216 F (2d) 859:

"Partiality by trier of facts, particularly where unrelieved against though challenged, vitiates all subsequent proceedings and no judgment based on them may stand."

"Fair trial by an unbiased and nonpartisan trier of the facts is of the essence of the adjudicatory process as well when the judging is done in an administrative proceeding by an Administrative functionary as when it is done in a court of law."

It appears then that the admitted secretive investigation of Pinson and Fields for two days, the acceptance of the illegally obtained evidence, the continued presence of Mr. Gladstone as attorney, witness, and investigator in the court room after the appellant's counsel invoked the rule of segregation of witnesses; the admitted illegal procurement of documentary evidence by Mr. Gladstone; the admission into evidence as an exhibit of the Federal Communications Commission of the adjudication of Mr. Gladstone's fitness by the Commission, a self-serving document, if one there be (Appendix) are glaring instances of bias and of sufficient gravity to vitiate the result of the entire proceeding. Such errors are prejudicial.

It is stated in Brown Telecasters, Inc. v. FCC, C.A. 1961; 289 F.(2d) 868:

"The court will take 'due account . . . of the rule of prejudicial error' in reviewing acts of the FCC in waiving rule that television studio must be located in the principal city to be served."

The ruling of the trial examiner in the above mentioned instances deprived the appellant of one of the main elements of due process of law as provided in 5 USC 1006 which was interpreted in the case of Ideal Farms, Inc. v. Benson, DC NJ 1960; 181 F.Supp. 62, where it was said:

"Administrative due process requires: (1) opportunity to be heard, (2) due notice of hearing, (3) fair conduct of hearing, (4) support in record for decision, (5) submission of proposed findings and tentative report, and, (6) opportunity to file and be heard on exceptions."

The failure of the Commission and the presiding examiner to question the weight, sufficiency and credibility of the testimony of a

Commission employee who was obviously prejudiced against the appellant, and to give substantial effect to his testimony to the extent that it would constitute a preponderance of the evidence against the appellant, constitutes a lack of due process, and prejudicial error.

The testimony of this employee went to the material allegations concluded to exist by the presiding examiner and the Commission.

CONCLUSION

Since the appellant did not get a fair hearing, and since the Commission decision is palpably invalid and erroneous, its action in finding that the control of station KIK 578 was in effect transferred from Fields to Pinson, Inc., should be set aside.

The failure of the presiding examiner and the Commission to recognize the burden of proof was on the Commission upon an enlarged application after the qualifications of the appellant had been satisfied, and the failure of the presiding examiner to properly recognize the acts and doings of the Commission employee were in some instances performed in violation of the appellant's constitutional privileges and without authority of law and that his conduct toward the appellant was influenced by accusatory statements made by the appellant against such employee, failed to afford the appellant a fair hearing within the purview and provisions of the Administrative Procedure Act (5 USC 1006, et seq.).

Respectfully submitted,

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APPENDIX

STATUTES AND RULES INVOLVED

Pertinent provisions of the Administrative Procedure Act,
5 U.S.C. 1006 (c):

Section 1006

(c) Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

Communications Act of 1934, as amended, 47 U.S.C. Sections 308, 308 (b), 309 (a) (b) (e), 310 (b), 312 (a) (1), 402 (b) (1) (2) (6) (c):

Section 308

308. Application — Conditions and restrictions in license for foreign communication. — (a) The Commission may grant construction permits and station licenses, or modifications or renewals thereof, only upon written application therefor received by it: . . . "

(b) All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any,

with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

Section 309

309. Action upon applications — Form of and conditions attached to licenses. — (a) If upon examination of any application provided for in section 308 (§308 of this title) the Commission shall find that public interest, convenience and necessity would be served by the granting thereof, it shall grant such application.

(b) Except as provided in subsection (c) of this section, no such application —

(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, or

(2) for an instrument of authorization in the case of a station in any of the following categories:

(A) fixed point-to-point microwave stations (exclusive of control and relay stations used as integral parts of mobile radio systems),

(B) industrial radio positioning stations for which frequencies are assigned on an exclusive basis,

(C) aeronautical en route stations,

(D) aeronautical advisory stations,

(E) airdrome control stations,

(F) aeronautical fixed stations, and

(G) such other stations or classes of stations not in the broadcasting or common carrier services, as the Commission shall by rule prescribe,

shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof.

* * * *

(e) If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

Section 310

(b) No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 (§308 of this title) for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

Section 312

312. Administrative sanctions. — (a) Any station license or construction permit may be revoked —

(1) for false statement knowingly made either in the application or in any statement of fact which may be required pursuant to section 308 (§308 of this title);

Section 402

(b) Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit or station license, whose application is denied by the Commission.

(2) By any applicant for the renewal or modification of any such instrument of authorization whose application is denied by the Commission.

* * * *

(6) By any person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), (3), and (4) hereof.

* * * *

(c) Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which the appeal is taken; a concise statement of the reasons on which the appellant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon filing of such notice, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power, by order, directed to the Commission or any other party to the appeal, to grant such temporary relief as it may deem just and proper. Orders granting temporary relief may be either affirmative or negative in their scope and application so as to permit either the maintenance of the status quo in the matter in which the appeal is taken or the restoration of a position or status terminated or adversely

affected by the order appealed from and shall, unless otherwise ordered by the court, be effective pending hearing and determination of said appeal and compliance by the Commission with the final judgment of the court rendered in said appeal.

11 ↓
BRIEF FOR APPELLEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,441

CHARLES P. B. PINSON, INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION
Appellee.

ON APPEAL FROM A DECISION AND ORDERS OF THE
FEDERAL COMMUNICATIONS COMMISSION

MAX D. PAGLIN,
General Counsel,

United States Court of Appeals
for the District of Columbia Circuit

DANIEL R. OHLBAUM,
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FILED APR 2 1963

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CLERK

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Federal Communications Commission
Washington 25, D. C.

STATEMENT OF QUESTIONS PRESENTED

Counsel for appellant and appellee were unable to reach an agreement by prehearing stipulation as to the issues presented in this case. Counsel for appellee believe that the following questions are presented:

1. Whether substantial evidence supports the Commission's determination that appellant was disqualified to receive a grant of its applications, because its sole owner assumed control of a station not licensed to him, in violation of Section 310(b) of the Communications Act, and was a party to false statements made to conceal the violation from the Commission.

2. Whether the Commission committed procedural error or deprived appellant of a fair hearing.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,441

CHARLES P. B. PINSON, INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

ON APPEAL FROM A DECISION AND ORDERS OF THE
FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This is an appeal filed under Section 402(b) of the Communications Act of 1934, as amended, 47 U.S.C. 402(b), from (1) a Decision of the Commission released July 30, 1962 (R. 916-925), to the extent that it denied the applications of Charles P. B. Pinson, Inc., wholly-owned by Charles P. B. Pinson, for (a) renewal of license for two-way common carrier radio station KIG289 at St. Petersburg, Florida, (b) renewal of license for one-way common carrier radio station KIG843 at St. Petersburg, Florida, (c) renewal of license for two-way common carrier radio station KIB386 at Tampa, Florida, (d) authority to change the transmitter locations and antennas of stations KIG289 and KIG843, (e) modification of construction permit for two-way common carrier radio station KIN652 at Jacksonville, Florida, to extend completion date,

and (f) a construction permit for a new one-way common carrier radio station at Clearwater, Florida; and, from (2) a Memorandum Opinion and Order released October 25, 1962 (R. 956-958), insofar as it denied a petition for reconsideration of the Commission's July 30, 1962 decision filed by Charles P. B. Pinson, Inc., and ordered a termination of the licenses of Charles P. B. Pinson, Inc. effective November 30, 1962.^{1/} The relevant background is as follows:

Since 1953 Charles P. B. Pinson, Inc., which is wholly-owned by Charles P. B. Pinson (Pinson), has held various licenses for one-way and two-way common carrier radio stations^{2/} in the Domestic Public Land Mobile Radio Service at a number of communities in Florida (R. 684). In 1955 Pinson, who was then the permittee of two-way station KIG289 in St. Petersburg, and the operator of a telephone answering service there, filed

1/ The Notice of Appeal, filed on November 23, 1962, specified Charles P. B. Pinson as an appellant in both his corporate and individual capacities, and also purported to appeal from the Commission actions of July 30, 1962, and October 25, 1962, insofar as they denied the application of James C. Fields for renewal of license for common carrier radio station KIK578 at Tampa, Florida, and granted the mutually exclusive application of Alan H. Rosenson, d/b/as All-Florida Communications Company. On January 25, 1963, the Court granted the Commission's motion for partial dismissal and ordered the appeal "dismissed as to Charles P. B. Pinson, and to the extent that it seeks review of those portions of the Commission's Decision released July 30, 1962, and the Memorandum Opinion and Order released October 25, 1962, which denied the application of James C. Fields, for license renewal, and granted the application of intervenor."

2/ A "two-way station" is a facility where both the base station and mobile units transmit and receive messages; a "one-way station" is a facility where the base station (cont'd)

applications for two new one-way stations in St. Petersburg and Tampa, to operate on the frequencies 35.58 and 43.58 megacycles (mc), respectively (R. 918; Tr. 1309). After being informally advised by the Commission that both applications could not be granted without an evidentiary showing that the two proposed stations could not be operated on the same channel, since the two frequencies sought were at that time the only ones available for this service, Pinson dismissed the Tampa application (R. 918, 684; Tr. 1309, 1311-1312). The Commission granted Pinson's St. Petersburg application without hearing and issued him a construction permit on October 1955 for Station KIG843 (R. 918, 684; Tr. 1312).

On January 28, 1957, James C. Fields (Fields), Pinson's 70-year-old father-in-law, filed an application for a new one-way station on 43.58 mc at Tampa (R. 918, 686). The Commission granted the application of Fields, which did not disclose his family relationship with Pinson (R. 687), and issued Fields a construction permit in July 1957 (R. 918, 686-687). In the meantime Pinson had been negotiating to purchase a two-way station at Tampa and, on July 17, 1957, sought Commission consent to assignment of the license for Station KIB386

2/ (cont'd) transmits code or voice messages for receipt by the affiliated mobile units. The latter service is commonly referred to as "one-way paging" or "pocket paging".

at Tampa from Joseph H. Wofford, the licensee, to Pinson (R. 918, 685). The Commission granted consent in October 1957. Pinson took over operation of the Tampa two-way station and opened a Tampa answering service in February 1958 (R. 918, 685).

Fields' station was licensed on March 4, 1958, with the call letters KIK578, and began operation on or about that date (R. 918, 688). Complaints of interference to television receivers brought to the Commission's attention that KIK578 (Fields' one-way station) and KIB386 (Pinson's two-way station) had control points at the same location and that there was some apparent inter-relationship (R. 918, 689; Tr. 1314, 1318-1319). On March 10, 1958, the Commission reconsidered and rescinded its action licensing Fields' station (R. 918, 689). On March 12, 1958, in a telephone conversation with Commission personnel, Pinson disclosed his family relationship with Fields and was advised of the necessity of establishing that their business dealings were bona fide (R. 918, 689; Tr. 1318-1320).

On March 18, 1958, Pinson came to Washington, stated that Fields was ill, and filed an application to change the frequency of Fields' station (R. 918, 690; Tr. 1322).^{3/} Pinson

^{3/} Following the interruption of Fields' service in March 1958, because of the Commission's temporary rescission of license, Fields was "sick of the whole thing" and "sorry [he] went into it", but since "[he] had a contract with Mr. Pinson to operate the thing [he] was perfectly content to let him go ahead and operate it" (R. 693; Tr. 1031, 1032, 1035-1036).

also submitted various documents to Commission staff members with respect to the Pinson-Fields business relationship: (a) affidavits of Fields and himself dated March 17, 1958; (b) evidence of a conditional sale of a transmitter by Pinson to Fields on March 3, 1958; and (c) employment contracts between Fields and Pinson dated November 5, 1957, and March 13, 1958 (R. 918, 690-691). In reliance upon these representations, the Commission that same day reinstated Fields' license and granted the application for a change of frequency (R. 918, 691; Tr. 1326).

Subsequently, in March and April of 1959, the Commission conducted an informal investigation to ascertain whether Fields' station was in reality being conducted by and in the name of Pinson (R. 918-919, 692; Tr. 1332).^{4/} Thereafter, Pinson sought modification and renewal of his St. Petersburg and Tampa licenses, extension of his outstanding construction permit for another two-way station at Jacksonville, and authorization for a new one-way station at Clearwater, Florida. Fields applied for renewal of his Tampa authorization and Alan H. Rosenson, d/b/as All-Florida Communications Company (Rosenson) filed a competing application.

By Order released June 6, 1960 (R. 83-85), the Commission designated Pinson's applications for hearing on nine

^{4/} The investigation was prompted by certain allegations of a competing applicant in connection with a further application by Pinson for a one-way signaling facility at Lakeland, Florida (R. 691; Tr. 1331).

issues centering primarily on character qualifications, including issues, among others, as to whether he made untrue statements with the intent to mislead the Commission; the nature of his legal, financial and other relations with Fields; and, whether he had violated Section 310(b) of the Communications Act, 47 U.S.C. 310(b), by assuming control over Fields' one-way station at Tampa. Fields' renewal application for station KIK578 was concurrently designated for hearing on similar issues relating to character qualification, and comparative issues with respect to Fields' renewal application and the mutually exclusive application of Rosenson. Hearings were held between February 20, 1961 and June 30, 1961, when the record was closed. Proposed findings of fact and conclusions of law were filed by all parties, Pinson and Fields filing jointly (R. 384-437) on July 19, 1961. Reply findings were filed on August 3, 1961 by the Common Carrier Bureau (R. 622-631).

On November 15, 1961, the Hearing Examiner released his Initial Decision (R. 679-711), proposing to deny the Pinson and Fields applications and to grant the Rosenson application.

The Examiner found that Fields had at all stages surrendered control of his station to Pinson, apart from his affirmative action in discontinuing the station's operation in March 1958, in compliance with the Commission's action rescinding the original permit (R. 706-707). Pinson helped prepare

the application in his office (R. 686, 706; Tr. 568-569, 663, 956, 957, 978-981), paid for the engineering work (R. 686, 706; Tr. 1803-1811, R. 239), and solicited business on his own letterhead before the application was filed (R. 695-696, R. 226; Tr. 642, 833-835).^{5/} Pinson also leased space and purchased, installed and maintained equipment (R. 688, 706; Tr. 709, 715, 710, 711-714, 733, 1000, R. 255, 265). Pinson's financial investment in the station substantially exceeded that of Fields,^{6/} and all expenses of operation were paid by Pinson (R. 688-689, 694, 706-707; Tr. 436-438, 606, 711-714, 721-725, 756-757, 770-771, 815, 816, 857, 1001-1002). The telephone listing of the service and all advertising were in the name of Pinson, Inc. (R. 689, 706; Tr. 833-835, 858-864, 866, 1056).^{7/} Pinson did all the billing under his own name until April 1, 1959 (R. 692, 706; Tr. 829, R. 228), collected all bills and delinquent accounts (R. 689, 706; Tr. 831), and commingled the money collected with the funds of Pinson, Inc. until February of 1961 (R. 693, 706; Tr. 828). Pinson retained ownership of the receivers for over a year, during which time rental charges paid by subscribers went directly

^{5/} Where record references appear in parentheses, references preceding the semicolon are to the examiner's findings and succeeding references are to the supporting evidence.

^{6/} The examiner found that Fields had a net cash investment of \$444.59, at most, in the station (R. 707, 694).

^{7/} The only solicitations of subscribers to the service made by Fields was to one or two of his friends (R. 706; Tr. 1020-1021).

to him (R. 688-689, 706; Tr. 756, 730, 821, 1021-1022). Fields never maintained a separate place of business and the receivers of subscribers were serviced at Pinson's place of business (R. 689, 692, 706; Tr. 662, 1022).

After April 1959, as a result of suggestions from Commission investigators, Pinson transferred the receivers to Fields for \$40 each (approximately the original cost), rendered bills in Fields' name, set up separate books for Fields' accounts, and had Fields' name posted on the windows and doors of the Tampa office for the first time (R. 692-693, 707; Tr. 908-910, 1022, 1043, 1819-1820). However, Fields rarely came to Tampa, testifying that it was an inconvenience and he thought it "silly" personally to check on the operation of the station (R. 693, 707; Tr. 1043). He at no time maintained station records, which were kept by Pinson (R. 689, 706; Tr. 676, 687-688, 876, 688, 830-831, 1027-1030, 1044-1049, 1052-1054). Revenues continued to be commingled with Pinson's until February 1961, when a separate account was set up for Fields' funds (R. 693, 706; Tr. 828, 1055). However, only Pinson could make withdrawals from this account and \$500 of his own money was also deposited in the account (R. 693, 706; Tr. 1055, 828).

Upon the foregoing facts and the record as a whole, the examiner concluded that Fields had violated Section 310(b) of the Communications Act by surrendering control of the station to Pinson without Commission authority, and that

this conduct disqualified him from being a licensee of the Commission (R. 707). The examiner further concluded that Pinson was also disqualified because he was "part and parcel to the unauthorized delegation of control", and because of the presence of certain aggravating circumstances (R. 710-711).^{8/}

Pinson and Fields filed joint exceptions (R. 724-752) to the Initial Decision on January 3, 1962, and the Common Carrier Bureau, although concurring in the ultimate result reached by the examiner, urged additional adverse conclusions as to Pinson and Fields by way of exceptions filed on January 4, 1962 (R. 753-766). Oral argument before the Commission en banc was scheduled but not held since both Pinson and Fields failed to appear by counsel at either the argument scheduled for May 7, 1962 (Tr. 2026-2029), or at the subsequent argument of June 8, 1962 (Tr. 2030-2031), scheduled by the Commission on its own motion (R. 885-886) to permit Pinson to secure counsel.

On July 30, 1962, the Commission released its Decision (R. 916-925) denying the applications of Pinson and Fields and granting the Rosenson application. The Commission adopted the Examiner's findings of fact as substantially correct and

^{8/} The examiner found that Pinson engaged in unauthorized construction and knowingly gave false testimony at the hearing with intent to mislead the examiner and the Commission (R. 710).

affirmed the Examiner's ultimate conclusion that Pinson and Fields should be disqualified. However, agreeing with the Common Carrier Bureau's contention that the examiner had "miscast the Fields and Pinson roles in the improper transfer of control," the Commission rejected the examiner's apparent view that Pinson's assumption of control of station KIK578 was the result of Fields' unwillingness to assume responsibility for the station. It concluded, instead, that "Fields was no more than a straw-man for the real party-in-interest, Pinson" from the outset (R. 919). The Commission further concluded (R. 918, 919-920):

(a) the statement contained in Fields' original application that he would have absolute control over the physical operation and service of the station; (b) the claim in his letter to the Commission of May 27, 1957, that he intended to manage the station and actively participate in its operation; (c) the contract of March 13, 1958, providing for Fields' ownership of transmitter and receivers and Fields' payment of all necessary costs; and (d) the Fields and Pinson affidavits of March 17, 1958, stating inter alia that there was no agreement between Pinson and Fields as to the ownership or operation of the station prior to November 1957, are all false, and were designedly so in order to mislead the Commission into believing that Fields was the real party-in-interest.

Basing its disqualification of Pinson solely on the foregoing conclusions, the Commission expressly declined to rely on the aggravating circumstances considered by the examiner (R. 920). It also considered the record showing as to the reputations of Fields and Pinson in their communities for honesty and good character, but concluded that this general

character evidence was not controlling "in view of the specific demonstration in this proceeding of a willingness to deceive a governmental regulatory body to achieve private ends" (R. 920).

On August 28, 1962, Pinson and Fields filed a Petition for Rehearing, Reconsideration and Stay (R. 931-942). By Order released on August 29, 1962 (R. 943-944), the Commission stayed the effectiveness of its decision as requested by Pinson and Fields. On October 25, 1962, the Commission released a Memorandum Opinion and Order (R. 956-958), in which it denied the petition for rehearing and reconsideration and ordered that the operation of the Pinson and Fields stations be terminated at 3:00 a.m., EST, on November 30, 1962.

Pinson appealed from the foregoing action of the Commission on November 23, 1962 (see fn. 1 , supra). A motion for stay and for immediate hearing filed with the Court by Pinson on November 27, 1962, was withdrawn on November 30, 1962, after the Commission, on November 28, 1962, stayed its Memorandum Opinion and Order released October 25, 1962, as it applied to Charles P. B. Pinson, Inc., during the pendency of this appeal.

SUMMARY OF ARGUMENT

The Commission properly determined that Pinson was disqualified to receive a grant of his applications because he assumed control of Fields' station in violation of Section 310(b) of the Communications Act, and was a party to false statements made to conceal the violation from the Commission. The record furnishes ample support for the Commission's finding that Fields was used as a "front" and that Pinson was the real party in interest both when the application was filed and at all subsequent stages in the station's operation. The Commission's conclusion that the misrepresentations about Fields' role were designedly false, follows logically from the foregoing finding and is a reasonable inference from the circumstances of record.

Appellant's procedural contentions are unfounded. The burden of proof is by statute on the applicant in proceedings of this nature, and not on the Commission. The record refutes appellant's unsubstantiated charges of improper conduct by Commission investigators. Appellant has shown no valid basis either for claiming prejudice, or for belatedly challenging the admissibility of the evidence obtained during the pre-hearing investigation.

ARGUMENT

In Point I of his brief, Pinson challenges the evidentiary support for the Commission's conclusion that "Appellant, James C. Fields, was not entitled to a renewal of his license" (Br. 12, 15), and urges reversal of the Commission's decision that "Fields violated Section 310(b)" of the Communications Act (Br. 22). However, on January 25, 1963, the Court dismissed this appeal "to the extent that it seeks review of those portions of the Commission's Decision released July 30, 1962, and the Memorandum Opinion and Order released October 25, 1962, which denied the application of James C. Fields, for license renewal." Accordingly, there is no question before the Court concerning the propriety of the Commission's order with respect to Fields. On the assumption that appellant may have meant to challenge the denial of Pinson's applications, we shall show below that the Commission's findings as to Pinson have ample record support and that Pinson's disqualification was proper.

I. THE COMMISSION'S DETERMINATION THAT PINSON LACKED THE NECESSARY CHARACTER QUALIFICATIONS TO RECEIVE A GRANT OF HIS APPLICATIONS, IS REASONABLE AND SUPPORTED BY THE RECORD AS A WHOLE.

The Commission's conclusion that Pinson, rather than Fields, was the real party in interest in station KIK578, has ample warrant in the findings and supporting evidence set forth in the Counterstatement. That Pinson was interested from the outset in adding a one-way station at Tampa to his network of

Florida common carrier operations, is shown by his own application in 1955. While this application was dismissed to avoid a hearing, it was followed by another application for the same facility, which was nominally filed by Pinson's 70 year old father-in-law and did not disclose the family relationship. Pinson's initial active interest in complementing his Tampa telephone answering operation with "Pocket Phone" service is shown by the facts that he helped prepare Fields' application in his own office, paid for the engineering work, and solicited business for the one-way Tampa "Pocket Phone" service on the letterhead of Pinson, Inc. even before the application was filed. These solicitations stated that Pinson, Inc. "will be able to provide you with Pocket Service about the 15th of January, so that your Tampa Office operation will be then identical with your St. Petersburg one" (R. 695-696; Tr. 833-835). Before the station went into operation, Pinson ordered the equipment, leased space, arranged for roof rental, and contracted for maintenance of equipment.

Although Fields was "sick of the whole thing" and "sorry I went into it" after the family relationship was revealed to the Commission and the original permit rescinded in March 1958, Pinson continued his pervasive role. It was Pinson who came to Washington to seek a change of frequency and to defend the Pinson-Fields relationship. The telephone listing, all advertising, and all billing for the service were in the

name of Pinson, Inc. Pinson kept all records and maintained all equipment. Accounts and receiver charges were collected by Pinson, who commingled the money with funds of Pinson, Inc. The changes made in April 1959, after the Commission's investigation and at its suggestion, were only nominal. For, although Pinson added Fields' name to the office door for the first time, Fields rarely came to Tampa because he felt it "silly" to check on the station's operation. Moreover, station revenues continued to be commingled with funds of Pinson, Inc. until February 1961 and, even then, only Pinson could make withdrawals from the account established.

The foregoing facts, which are substantiated with record support in the Counterstatement, clearly justify the Commission's conclusion that "Fields was no more than a straw-man for the real party-in-interest, Pinson", who used his elderly father-in-law as a front without intending that he ever have control of the station (R. 919). Appellant's argument to the contrary (Br. 15-22) lacks merit.

Although purporting to challenge the substantiality of the evidence supporting some of the Commission's findings, much of appellant's argument consists of assertions that certain of the incidents upon which the Commission relied would permit of different inferences. Thus, it concedes that Pinson helped prepare the application in his office, but urges that this was natural since Fields was his father-in-law and had

no office (Br. 16). Similarly, it does not contest the examiner's findings that the telephone listing and billings were in Pinson's name or that Pinson collected accounts, commingled revenues with funds of Pinson, Inc., paid operational expenses, kept all station records, and repaired equipment at the offices of Pinson, Inc. It merely asserts (Br. 19) that these were "clerical and menial tasks", which Fields could not be expected to perform.

With respect to the examiner's finding that "All equipment for the station was purchased by and billed to Pinson, Inc. with actual ownership of the receivers remaining in Pinson, Inc. for a period in excess of one year", appellant states (Br. 17) that Fields subsequently, on March 3, 1958, partially reimbursed Pinson by check for the transmitter. Insofar as the record shows, this was the only payment by Fields to Pinson (R. 707). Appellant concedes (Br. 17), that Pinson, Inc. owned the receivers for over a year, but attempts to dismiss this fact as inconsequential. It does not dispute the finding that Pinson received all receiver rental revenues during the period of his ownership, but asserts, without citation of record support (Br. 17-18), that this was in the nature of a ^{9/} salary or commission rather than to recoup his investment.

While claiming (Br. 22) that the examiner's findings as to the comparative investments of Fields and Pinson in the

^{9/} Although appellant states (Br. 18) that Fields paid income taxes on revenues from the station, the record shows that he paid such taxes for the first time in 1960, for the tax year 1959 (Tr. 973, 1051-1052).

station are contrary to the evidence, appellant cites no conflicting evidence except with respect to engineering costs at the time of the original application. Although Fields testified that he paid for the engineering service, he could not recall "how much and when and how" (R. 686; Tr. 992). The record shows that Pinson, Inc. issued its check number 7361 to the engineering firm and the engineer testified that he had no record of receipt of payment from Fields (R. 686; R. 239, Tr. 1803-1811, 810). On the basis of the record as a whole, the examiner properly concluded that "Pinson, Inc. did pay for the engineering services rendered in connection with the application of James C. Fields" (R. 707).

10/ The examiner's findings were as follows (R. 707):

"On the basis of the evidence herein, it is concluded that Pinson, Inc. did pay for the engineering services rendered in connection with the application of James C. Fields. Receivers were purchased and paid for by Pinson, Inc. Insofar as is shown by the record, there have been only two cash transactions between these parties. One is the check dated March 3, 1958 from Mr. Fields to Pinson, Inc. in the amount of \$741.77 to cover a down payment on the transmitter and cost of station installation. The other transaction is the check of January 7, 1959 from Pinson, Inc. to Mr. Fields in the amount of \$555.41. All other transactions have been bookkeeping entries only on the books maintained by Pinson, Inc., the details of which were not presented in evidence. Mr. Fields thus had a net cash investment of only \$186.36 or if his testimony of a total investment of \$1000 is accepted, a net cash investment of \$444.59. Giving consideration to the receivers only, the investment of Pinson, Inc. in station KIK578 was substantially in excess of that of Mr. Fields."

Appellant further concedes (Br. 15) the correctness of the examiner's conclusion that the bare reservation of control in the contract between Fields and Pinson was not sufficient to establish actual control by Fields. However, it challenges, as unsupported "by a shadow of evidence" (Br. 16, 21-22), the findings that the "only evidence of affirmative action on the part of Mr. Fields in the construction or operation of this station" was his action in closing the station in March 1958 upon recision of the original permit, and that he had no "continuing personal interest" in the operation of the station. Support for the Commission's findings is found in the myriad acts (supra, pp. 6-8) done by and in the name of Pinson, and the absence of a showing of active participation by Fields, who had no office, no telephone listing, no access to revenues and solicited no business (except for one or two friends). Moreover, Fields admitted that after closing down the station in March 1958, he was "sick of the whole thing" and "perfectly content to let [Pinson] go ahead and operate it" (R. 693; Tr. 1031, 1032, 1035-1036). Fields further testified that he made "two, three, four trips" to Tampa after the token changes made in April 1959 as a consequence of the Commission's investigation, but then concluded that "this is silly" and "causing me a great deal of inconvenience"; "so, I took an extended motor trip, was gone for quite a while, and since that time very rarely have I come to Tampa" (R. 693; Tr. 1043).

Clearly, the isolated matters which appellant alleges

(Br. 21), some with and some without record citation,^{11/} do not overcome the bulk of the evidence as to the relative roles of Pinson and Fields. The Commission's determination that it was Pinson who actually controlled the station from the outset does not rest upon any one factor alone, but upon the totality of circumstances shown by the record. While some of the evidence may be conflicting and certain factors, viewed in isolation, may be subject to different inferences, the evaluation of the "relative weight to be given to all the relevant factors presented must lie in the sound discretion of the Commission." Kidd v. Federal Communications Commission, 112 U.S. App. D.C. 288, 289, 302 F.2d 873, 874. On the basis of the entire record, it cannot be said that the ultimate conclusion drawn by the Commission was unreasonable or an abuse of discretion.

The Commission's further conclusion (R. 919-920) that Pinson and Fields intentionally made false representations to it, also has ample support. The original application, which Pinson helped prepare, stated that Fields would have absolute control over the physical operation and service of the station (R. 919). A subsequent letter to the Commission, dated May 27, 1957, similarly stated that Fields intended to manage the station and to participate actively in its operation (Tr. 951, 994, 995). That Fields did not do these things, the Commission

^{11/} Some of appellant's allegations are contradicted by other evidence of record (see, e.g., Tr. 1044-1049, 1052-1054, 1059).

found (R. 919), was because Pinson never intended that he should. The contract between Fields and Pinson, submitted to the Commission by Pinson in March 1958 after recision of the original permit (supra, pp. 4-5), represented that Fields owned the receivers (R. 259), when Pinson knew that he was then the owner. Pinson did not put the receivers in Fields' name until a year later, following the Commission's investigation. The affidavits of Fields and Pinson submitted by Pinson to the Commission at the same time, which were prepared in Pinson's office (Tr. 961-962), stated that there was no agreement between Pinson and Fields as to the ownership or operation of the station prior to November 1957 (R. 256). However, the record demonstrates that it was understood from the outset that Fields would be the nominal licensee and Pinson would run the station as an adjunct of his common carrier network. Indeed, even before the application was filed Pinson solicited business for the station as an operation of Pinson, Inc. (R. 919; R. 226).

Appellant does not dispute the various false statements found by the Commission, but urges (Br. 23) that the examiner reached a different conclusion. The examiner's conclusion (R. 708) that the statements reflected the intent of the parties when made, though proved false by subsequent events, stems from his apparent view that Pinson assumed control of the station because Fields became unwilling to exercise responsibility (R. 919). However, the Commission determined

(R. 919), with ample record justification, that the examiner had miscast the Fields and Pinson roles. As the Commission concluded (R. 919-920), it necessarily follows from the finding that Fields was never more than a straw-man for Pinson, that the false statements "were designedly so in order to mislead the Commission into believing that Fields was the real party-in-interest." Appellant's asserted theory (Br. 23) that this determination is vitiated because the record might support "two fairly conflicting views," is unsound. Universal Camera Corp. v. Labor Board, 340 U.S. 474, 488.

In sum, the Commission's determination that Pinson lacked the requisite character qualifications and should be disqualified because of his conduct, was manifestly proper. The transfer of control from Fields to Pinson, without authorization of the Commission, was violative of Section 310(b) of the Communications Act, 47 U.S.C. 310(b). Pinson not only instigated and participated in the violation, but was party also to the false statements made to conceal it from the Commission. The Commission concluded within its competence, that these matters were not outweighed by Pinson's reputation in his community for honesty and good character, "in view the specific demonstration in this proceeding of a willingness to deceive a governmental regulatory body to achieve private ends" (R. 920). Federal Communications Commission v. WOKO, Inc., 329 U.S. 223, 228-229.

II. APPELLANT'S CLAIMS OF PROCEDURAL INVALIDITY
LACK MERIT.

Appellant's argument (Br. 24-27) that the Commission improperly placed the burden of proof upon it and that the Commission did not sustain its burden of proof, is contrary to the governing section of the Communications Act. Pinson's applications for renewal of license, modification of construction permit, and for a new construction permit, were all filed pursuant to Section 308(a), 47 U.S.C. 308(a), and were designated for hearing pursuant to the provisions of former Section 309(b), 47 U.S.C. (1958 ed.) 309(b), which was then in effect.^{12/}

Section 309(b) provided in pertinent part:

* * * Any hearing subsequently held on such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issues specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant.

Accordingly, while Commission counsel adduced much of the evidence adverse to appellant, the ultimate burden of proof on the issues, as well as the burden of showing entitlement to a license, was by statute on the applicant. The circumstance

^{12/} Section 309(b) was amended by the Communications Act Amendments, 1960, Public Law 86-752, approved September 13, 1960, 74 Stat. 889. The comparable section in the amended Act is Section 309(e), which similarly places the burden of proof upon the applicant, except with respect to issues presented by a petition to deny or enlarge the issues. The exception has no materiality to this case, since the applications were designated for hearing on the Commission's own motion and not at the instance of another party.

that the issues included questions of misrepresentation and statutory violation did not convert the proceeding into a revocation of license proceeding under Section 312 of the Communications Act, or alter the statutory burden of proof. Independent Broadcasting Co. v. Federal Communications Commission, 89 U.S. App. D.C. 396, 398, 193 F.2d 900, 902, cert. den. 344 U.S. 837.

Appellant's final contention (Br. 27-31) is that the Chief of the Domestic Radio Facilities Division in the Commission's Common Carrier Bureau, Mr. Gladstone, who conducted the April 1959 investigation together with another Commission staff member, Mr. Harrison, conducted the investigation improperly. Appellant made similar charges in the spring of 1960, which the Commission rejected by letter dated July 7, 1960 (R. 234-236), as "not in accord with the facts" (R.235), after investigation.

The testimony subsequently adduced at the hearing showed that on March 30, 1959, the day the investigation commenced (Tr. 1332-1333), the Commission investigators called Fields for an appointment (Tr. 1333) and met with Pinson in his office (Tr. 1333). Upon being advised that they desired to know about Fields' Tampa operation and the nature and extent of the participation of Fields and Pinson (Tr. 1333-1334), Pinson stated that he had been ^{ct}exp~~er~~nding a visit from Commission personnel and had instructed his staff to cooperate fully (Tr. 1335, 1534, 1536). During the next few days, the Commission investigators conferred with Fields, Pinson and Pinson's employees and inspected various records (Tr. 1336, 1337-1338, 1339, 1348-1349, 1350-1351). The Commission investigators identified themselves

as such to each of Pinson's employees with whom they came in contact (Tr. 1527). They did not inspect any documents or material except in the presence of Pinson's employees and with the authority and consent of the person in whose custody the documents rested. (Tr. 1531-1532). On April 2 the Commission staff members apprised Pinson of the precise purpose of the investigation (Tr. 1340, 1344). Thereafter, on April 3, Pinson's employees showed the Commission's investigators certain material which Pinson gave them copies of on April 7 (Tr. 1350-1351).

The examiner concluded (R. 692, fn. 13): "None of the matters presented shows either improper or prejudicial action on the part of the Commission's investigators or of those interviewed and accordingly they are deemed of no materiality." Since Section 303(n) of the Communications Act, 47 U.S.C. 303(n), authorizes the Commission to inspect all radio installations licensed by it to determine whether the operations conform to the Commission's rules, the provisions of the Act, and the terms and conditions of the license, the examiner properly determined that the investigators were performing their proper duties as employees of the Commission.

Appellant's argument that the examiner should have excluded all documents obtained during the investigation, is not only untenable on its merits but also comes too late. Appellant did not object at the hearing to any evidence adduced by the Commission's staff on the ground that it had been improperly obtained.

Appellant further contends (Br. 28) that Mr. Gladstone must have been prejudiced against Pinson because of Pinson's

unsubstantiated charges of misconduct, and that he should have been excluded from the hearing and should not have been permitted to testify. However, the fact that appellant had previously made charges against Mr. Gladstone does not show that Mr. Gladstone was prejudiced against him and, in any event, Mr. Gladstone did not participate in an adjudicatory capacity, but only as counsel and a witness at the hearing (Tr. 87-88).^{13/} Mr. Gladstone testified that he was not prejudiced (Tr. 1500-1501). In view of the nature of the charges, fairness to Mr. Gladstone required an opportunity for him to testify as to these matters. The other staff member who was present at all times during the investigation (Tr. 1539) was excluded from the hearing room except when he appeared as a witness (Tr. 1554-1557). His testimony is fully corroborative of Mr. Gladstone's (Tr. 1539-1364). The Commission was also entitled to Mr. Gladstone's testimony as to his contacts with Pinson prior to April 1959 for the purposes of a full record. Mr. Gladstone's participation was solely as co-counsel of record, and is not shown to have involved any improper or prejudicial conduct in that role.

^{13/} Obviously, a party should not be permitted to disable witnesses or opposing counsel merely by attacking them and then claiming that the attack has made them prejudiced.

CONCLUSION

For the foregoing reasons, the Commission's orders with respect to Pinson should be affirmed.

Respectfully submitted,

MAX D. PAGLIN, •
General Counsel,

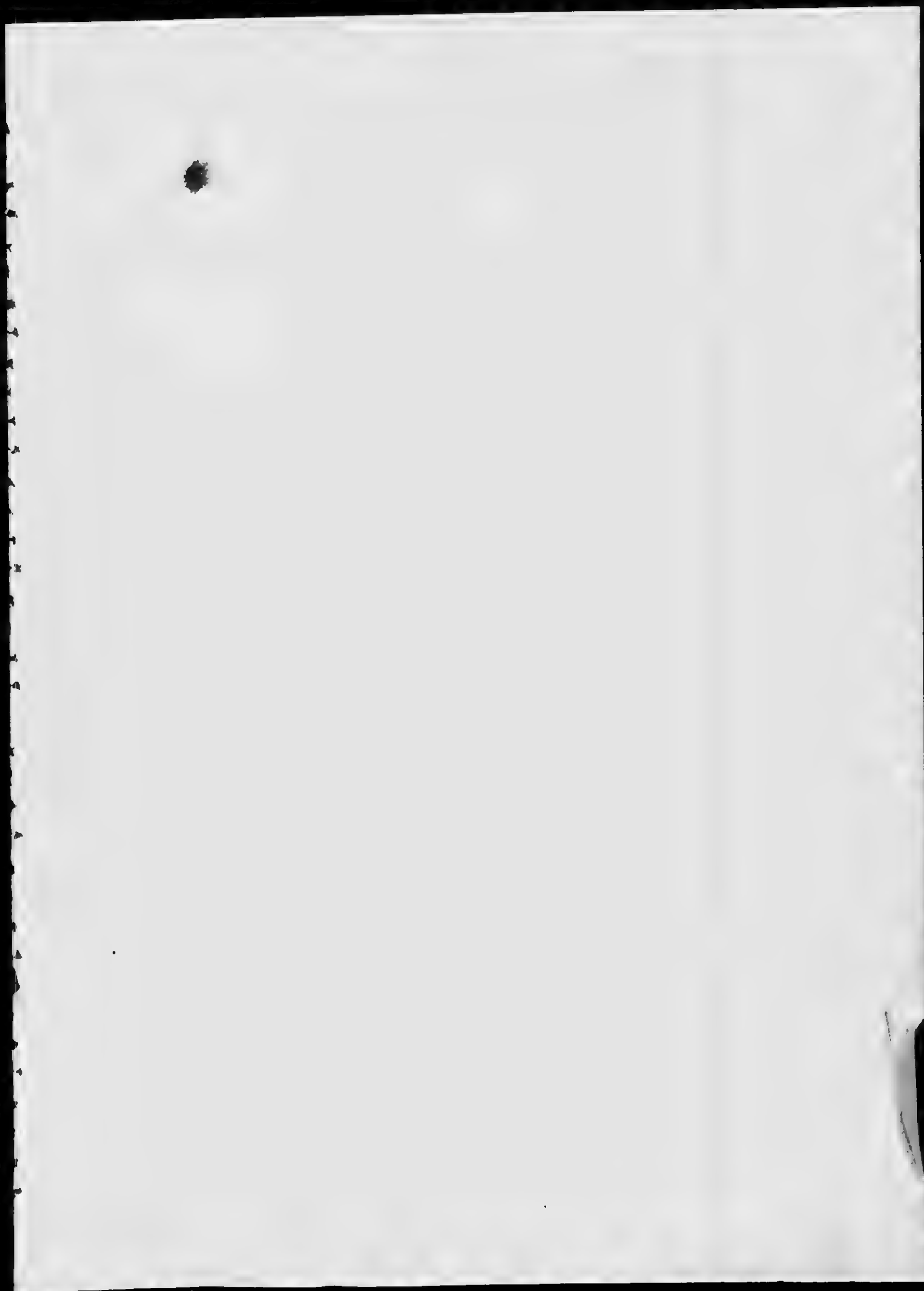
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Counsel,

RICHARD M. ZWOLINSKI,
Counsel.

Federal Communications Commission

April 2, 1963



REPLY BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,441

CHARLES P. B. PINSON, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

APPEAL FROM A DECISION OF THE
FEDERAL COMMUNICATIONS COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

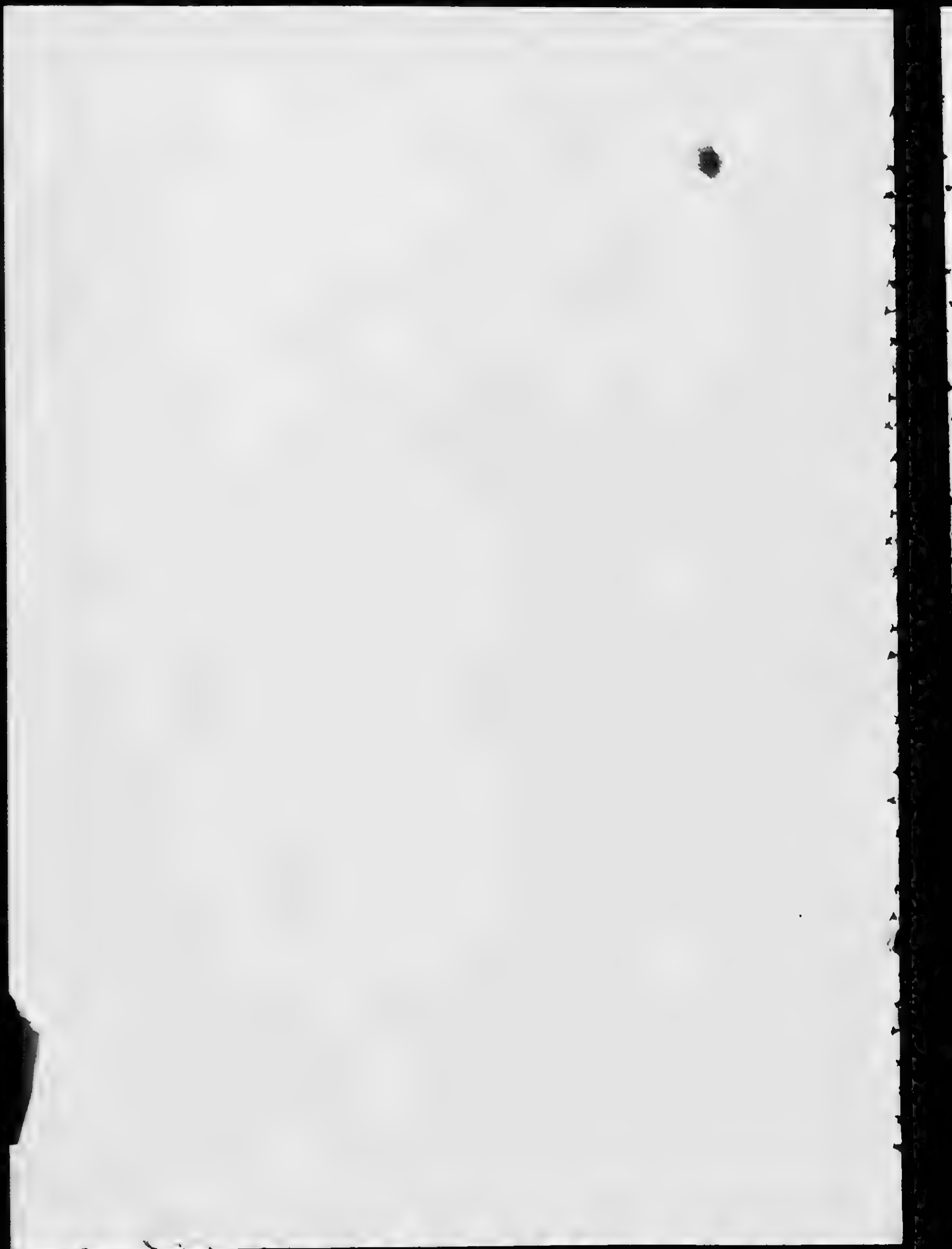
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CHARLES P. B. PINSON, INC.,

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APPEAL FROM A DECISION OF THE
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REPLY BRIEF FOR APPELLANT

CORRECTIONS TO COUNTERSTATEMENT OF CASE

The Appellant accepts the Counterstatements contained in the Appellee's Brief as being more complete and set forth in a chronological order, with the following additions, corrections and exceptions:

1. The Appellant refutes and disclaims as part of the Statement of Facts any conclusions or interpretations made by the Appellee or

counsel for the Appellee, but does accept as set forth the findings of the Commission and the findings set forth in the initial report of the Hearing Examiner. Exceptions have heretofore been made to these findings and conclusions of law.

2. On page 3 of Appellee's brief in the paragraph commencing "On January 28, 1957," and ending with the words "KIB 368," the following should be noted: There are no requirements contained in the Federal Communications Commission application forms submitted by the Appellant reflecting or requesting a disclosure of a family relationship between himself and Fields, and as a matter of fact, it was stated by Mr. Gladstone at the time of his original interview with Mr. Pinson: "Mr. Pinson assured me that the operation was a bona fide arms-length transaction conducted by his father-in-law. In fact, I remember agreeing with him, of course, his father-in-law had a right to go into business if he so desired, provided that a bona fides of the transaction were clearly maintained." (TR 1319)

3. On page 10 of Appellee's brief, and following the paragraph quoted from the findings of the Commission should be inserted the following paragraph from the findings contained in the initial decision of the Hearing Examiner:

"6. . . . considering as a whole, the evidence is not sufficiently persuasive to conclude that these documents were in fact back dated in order to mislead and misinform the Commission, nor is the evidence sufficiently persuasive to conclude that the circumstances surrounding the filing of the application for Station KIK 578 were other than as testified to by Mr. Fields. . .

"It is accordingly concluded that the statements of Mr. Pinson and Mr. Fields dated March 17, 1958, insofar as can be ascertained from the record were substantially true and correct when made." (R 679-711)

SUMMARY OF ARGUMENT

The basis of the Appellee's argument is apparently predicated upon the element of control and a violation of Section 310(b) of the Communications Act, and the impact of statements submitted by the Appellant to establish its contention that Mr. Fields was the true and lawful owner of Station KIK 578. The Appellee enumerated numerous inconsequential, picayune and unimportant elements for the purpose of showing that the Appellant was in truth and in fact the owner of the station and to substantiate the contentions of the Commission.

The Appellee has failed to rebut the decisions quoted by the Appellant in his main brief reflecting that the inconsequential acts were menial, and in truth and in fact the element of control was maintained by the record owner, Mr. Fields.

Consequently any statements made by the Appellant were not false and misleading and such statements as would reflect upon his character as a licensee of the Commission.

The Appellee has failed to sustain the burden of proof in the revocation proceeding and although the Appellee calls the proceeding a hearing under Section 309, in truth and in fact, and in legal effect, it was a proceeding under Section 312 of the Act.

Therefore, the Appellee has failed to sustain the burden of the substantial evidence rule as set forth in the Administrative Procedure Act (5 USC 1000, et seq.) and therefore, the ruling of the Commission should be reversed and remanded for further action.

ARGUMENT

The brief of the Appellee as a prefix to this heading correctly specified that there are no questions raised by this appeal as to the propriety of the denial of the application of James C. Field for license renewal. The question as specified by the Appellee concerns the

propriety of the findings and the denial of the applications by the Appellant, Pinson, upon a finding that Pinson was disqualified for lack of requisite character qualifications.

I

The Conclusion of the Federal Communications Commission That Appellant, James C. Fields, Was Not Entitled to a Renewal of His License Because of Alleged Violation of 47 USC 310(b) Is Not Supported by Competent and Substantial Evidence.

The conclusions of the Federal Communications Commission that Appellant, Pinson, was not entitled to renewal of his license because of alleged violation of 47 USC 310(b) is not supported by competent and substantial evidence.

The aforesaid argument contained in the Appellant's brief is disputed under the Heading: I. The Commission's determination that Pinson lacked the necessary character qualifications to receive a grant of his application is not supported by the record as a whole.

The Appellee concludes that Pinson rather than Fields was the main party in interest and in support thereof specified findings and evidence contained in the Counterstatement. This is an unjustified and unrealistic conclusion upon the argument projected by the Appellee. It is true that Pinson was interested in an additional one-way broadcasting station in Tampa; that he took additional other steps to legally conform with the requirements of the Commission; and that in each instance the action taken by Pinson, Inc. was confirmed and approved by the Common Carrier Bureau, which fact needs no reference since the same is admitted by the brief of the Appellee.

The reasons for the dismissal of any applications for other stations by the Appellant is of no consequence in this appeal, but merely reflects a desire on the part of the Appellant to improve his business

and economic status in conformity with statutory requirements. The Appellee emphasizes throughout the brief both in the Statement of Facts and in the Argument, that Mr. Fields was the father-in-law of Mr. Pinson, and goes so far as to call him "Pinson's 70-year-old father-in-law." There was no requirement that Mr. Fields disclose his relationship to Mr. Pinson or vice versa. In fact, the relationship between the parties is one which would make more plausible the numerous steps and procedures which Mr. Pinson took to assist Mr. Fields. The mere fact of relationship does not in and of itself infer a lack of bona fides in the operation of the radio station in question.

Mr. Gladstone in his testimony states, "that we would wish to be assured that any operation or transaction by Mr. Fields was in fact an arms-length transaction conducted by and in behalf of Mr. Fields solely, and was not an effort by some subterfuge to obtain for Mr. Pinson the Tampa signalling operation which we have previously indicated we would not give on this basis without some further show." (TR 1319)

The Appellant's main brief set forth the theory of this case insofar as this problem is concerned. The testimony with regard to the operation of the business under a contract by Mr. Pinson is admitted by the Appellee and is cited by the Hearing Examiner as being in existence along with a conditional sales agreement which was duly executed and which was found by the Hearing Examiner to be in existence prior to any action by the Federal Communications Commission. It is true that this fact is improperly disclaimed by the Commission in its Opinion. The problem involved centers itself solely upon the question of control pursuant to the provisions of Section 310(b) of the Federal Communications Commission Act. (47 USC 310(b))

This section states:

"No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of

control of any corporation holding such permit or license, . . . except upon application to the Commission . . ."

The Hearing Examiner in arriving at his decision indicated that the control of the operation apparently became vested in Mr. Pinson although the license was issued to Mr. Fields. The Commission claims that all of the procedures of these two parties were undertaken with a view to transferring control to Mr. Pinson without applying to the Commission as aforesaid. The problem involved is one of interpretation of the testimony before the Hearing Examiner and as reduced to writing by the Commission.

In every instance the allegations against Mr. Pinson and which are the basis for the disqualification found by the Commission are predicated upon this one particular series of transactions.

The initial Hearing Examiner, who had an opportunity to observe the witnesses and determine their credibility, found that the statements and actions undertaken by Mr. Pinson and Mr. Fields were substantially true at the time of the making. It appears that this gentleman who, if the requirements of the Administrative Procedure Act are followed, is an independent expert in this field, and it was his duty based upon the foregoing to arrive at certain independent conclusions. The testimony upon which the conclusions were based was produced by a group of men who were not specialists in the field although technically proficient in their radio and engineering operations. Most of the evidence and testimony surrounded certain financial and engineering data. The business practices of Pinson and Fields were particularly subject to criticism for their inadequacy and inaccuracy.

The failure to maintain records is recognized as reflecting upon a person's economic abilities and as bad business practice; but the failure to keep records and maintaining bad business practices, such as depositing checks immediately upon receipt thereof and making entries in account books, is not to be construed in any sense of the

word as a reflection upon the character and morals of a person. This alone is not sufficient to show character, let alone indicate the amount of control.

The fact still remains that Mr. Fields maintained supervision and control of the operation of the radio station KIK 578, the final test being observed and admitted by the Appellee when the Federal Communications Commission ordered the termination of the broadcasting services of this radio station. It is admitted that Mr. Fields promptly and without collaboration with Mr. Pinson, or anyone else, ordered the station off the air within a matter of minutes.

It is true that Fields was apparently being assisted financially by Charles P. B. Pinson, Inc., but the financing was being handled under a conditional sales contract which was delivered to the Commission and which would have been satisfied by the parties had it not been for this Hearing. The mere fact that at the time of the hearing only nominal sums had been repaid is of no consequence for the above reason. This was a binding and legal contract to which Mr. Fields could be held by the Appellant, and vice versa, and was not subject to any question by this Authority (Regents of University System v. Carroll, 50 SE (2d) 808, Affirmed 338 U.S. 586.)

The Appellee in his brief failed to make any retort or explanation of the decision and findings of In re Application of Standard Broadcasting Corporation, et al., 29 FCC 1129, wherein the menial tasks were undertaken by persons other than the owner of record. It states, and is repeated here for emphasis:

"Thus, it may be inferred that the important decisions made by him had the tacit approval of the station's ownership. In short, Rosen's relationship to station WPTR was never more than that of an employee who managed its operation subject to the oversight of the owners, and the facts do not substantiate Harris' contention that Rosen assumed 'control' over the station in contravention of section 310(b) of the Act."

The foregoing is a decision of the Federal Communications Commission.

The testimony adduced at the hearing in the present case reflects that the ultimate control was in Mr. Fields. No other more ultimate control is needed than to take the station off the air without consultation with anyone. This act in itself refutes the contention of the Appellee that Pinson was the sole owner and assumed control of a station not licensed to him. It is not a single unimportant element; it goes right to the heart of the element of "control."

The acts and doing of Mr. Pinson concerning the operation of this station were in conformity with instructions given to him by Mr. Gladstone and other Commission personnel.

It may be pointed out that although the Commission found from a review of the record and after reading a supplemental brief submitted by the attorney for the Common Carrier Bureau, the doings of Mr. Pinson and Mr. Fields were premeditated and designed to mislead the Commission. However, the Hearing Examiner in Initial Opinion found that the statements made by Pinson and Fields were substantially true when made. This conflict of opinion does not satisfy the substantial evidence rule specified in In re Application of Standard Broadcasting Corporation, et al., supra, and other citations contained in Appellant's main brief.

In the case of Universal Camera Corporation v. N.L.R.B., Cert. to U.S. Ct. of Appeals, 2nd Circuit (1951), 340 U.S. 474, Justice Frankfurter, at page 491, states:

"We conclude, therefore, that the Administrative Procedure Act and the 'Taft-Hartley' Act directs that the courts must now assume more responsibility for the reasonableness and fairness of the Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has

imposed on them responsibility for assuming that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decisions from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both."

It is further stated in the foregoing case, on page 495:

" . . . nothing suggests that reviewing courts should not give to the examiner's report such probative force as it intrinsically commands . . ."

In each of the cases cited by the Appellee herein, it was found that the applicant did not possess proper character qualifications to be licensed or to receive a permit from the Commission, and there was evidence of outright intention and direct failure to disclose facts to the Commission.

In the case of Federal Communications Commission v. WOKO, Inc., Sup. Ct. 1946, 329 U.S. 223, the facts involved the non-disclosure of stock ownership, and a course of deception for approximately twelve years, which was condoned by the Federal Communications Commission, and in that case the Federal Communications Commission properly and finally refused to renew the permit because of misrepresentations on the basis that the false statements and concealment of material facts had influenced the decision of the Commission, and the applicant failed to possess the proper character qualifications.

In the case of Mester v. United States, U.S. Dist. Ct., E.D. N.Y., 1947, 70 F. Supp. 118, the evidence and testimony adduced by the Commission reflected that the applicant had been cited in an action before

the Federal Trade Commission for fraudulent advertising and further for violation of Office of Price Administration regulations.

The foregoing lack of character qualifications are examples of types of situations which would warrant a decision and adverse action by the Federal Communications Commission on this account. Such situations do not exist in this case, but are merely inferences drawn by the Examiner and the Commission without any definite proof than herein set out.

In the case of Mester v. United States, supra, at page 122, it was held:

"A person's 'character' is usually thought to embrace all his qualities and deficiencies regarding traits of personality, integrity, temperament, consideration, sportsmanship, altruism, etc., which distinguish him as a human being from his fellow man. His disposition toward criminal acts is only one of the qualities which constitute his character. The statute subjects an applicant's 'character' to scrutiny by the Commission; in the absence of legislative directive to the narrow interpretation advanced by plaintiffs, courts must give towards that commonly understood definition, and in this case 'character' certainly embraces involvement in the litigation, proved against plaintiffs, and their dispositions not to be ungenerous and truthful concerning it."

It might be further pointed out in the Mester case that the Commission was in error in their contention that the applicant need possess certain technical qualification to manage a radio station. It was stated:

"The third reason advanced by the Commission is not important in view of their disposition made herein concerning the other two but in passing it may be noted that it is unimpressive. The Commission has itself determined a number of times that an intending purchaser need not personally possess a familiarity with engineering or other technical guide pictures required properly to operate a radio station. As long as there is available to purchaser a competent staff to handle these matters, no detriment to public interest from transfer is shown..."

From the foregoing, it would appear that the Commission has by inference authorized and approved the operation of a radio station by a person under contract.

This would apply to the instances in this case, since it is admitted by the Appellee that a contract to manage the Fields' station had been entered into by and between Fields and Pinson, Inc., and had been filed with the Commission. The question of control is the mere supposition and inference from the questions and testimony adduced herein.

The mere fact that Mr. Fields said that he was sorry he had entered into this contract or that he desired to take a long trip would have no bearing on the case. It, in truth, reflected confidence in the ability and character of the Appellant.

Management and ownership was still in Mr. Fields, and he had ultimate control as required.

It is, therefore, respectfully urged that the contentions of the Appellee to the effect that menial services were performed by Pinson did not indicate that there had been a surrender of ownership to Pinson, Inc.

The numerous picayune allegations of transfer of ownership referred to now as "nit picking" for lack of better words, by the Appellee through Commission personnel, was an obvious attempt on the part of certain Commission personnel to deprive Pinson of his livelihood. The Court is reminded that the Commission and the Hearing Examiner found that Mr. Pinson operated the stations in a satisfactory manner and within the requirements of need and necessity was serving the area properly and that the only grounds for disqualification were those instances surrounding the question of control of Station KIK 578.

If the Court finds that the circumstances surrounding the operation of station KIK 578 were substantially as stated by the Hearing Examiner, then there are no character qualifications which can be utilized to deprive Pinson of operating stations KIB 386, KIG 289 and KIG 843.

It was stated in Stahlman v. Federal Communications Commission, Dist. Ct. of Appeals D.C. (1942), 126 F (2d) 124:

"The Communications Act requires no more of an applicant for a radio license than proof of citizenship, character, and financial and technical qualifications to operate in the public interest. Possessing these, the applicant's eligibility is unchallengeable, assuming there is an unused frequency free of interference with an established station. This is the rule announced by the Supreme Court in the Sanders case (F.C.C. v. Sanders Bros. Radio Station, 309 U.S. 470, 60 S. Ct. 693). But the determination of these qualifications is an administrative function which Congress has committed to the Commission, subject only to the requirement that in granting or refusing the license it shall act as the public convenience, interest or necessity requires . . . This, however, as the Supreme Court remarked, is not a grant of unlimited power, but only the right to control the range of investigation in ascertaining what, within the compass of that Act, is proper to satisfy the requirements . . ."

The problem here is to determine one of two findings from the evidence adduced at the Hearing. The entire case of the Commission, if one there be, hinges upon circumstances surrounding the permit to operate Station KIK 578. If the facts and testimony are found to be that appellant made false statements concerning the operation of this station by Mr. Fields, then the decision of the Hearing Examiner and the Commissioner are correct. If, however, the testimony adduced from the whole record, and not portions taken out of context, reflect that the appellant and/or Mr. Fields did not submit false statements or make same, feeling that such statements be true and not false, then any claim the Commission may have would fail as there is no testimony presented by the Commission upon any other subject. The whole case surrounds this one series of facts. It is established and admitted by the Hearing Examiner and the Commission that Pinson had a favorable reputation in his community for truth and veracity, and, in addition, was serving the area as required by the applicable Federal statutes, and there would be some hardship in replacing his services.

It was stated by the Commission that he falsified the records and applications and was, in fact, the true owner. It was found by the Examiner that such was not the case, and that these statements were substantially true when made.

It is therefore submitted that when two so-called authorities acting allegedly independently of each other, the Hearing Examiner and the full Commission, are unable to agree on the material elements of the cause, then the Commission has failed to establish that the decision complies with the requirements of the Federal Administrative Procedure Act (5 U.S.C.A. 1000, et seq.), and there has not been a compliance with the substantial evidence rule.

II

The Commission Illegally Imposed the Burden of Proceeding With the Evidence Upon the Appellant After Qualifications of the Applicant for License Renewal Had Been Determined.

In response to Question II of the Appellant's brief and Point "II Appellant's Claims of Procedural Invalidity Lack Merit," the Appellant would show that under no circumstances could the Appellant admit this point is one for consideration in the form presented by the Appellee.

Naturally, the Appellant claims that there has been procedural invalidity, and to the point such actions constitute the lack of due process and the invalidity of the proceedings.

The Appellee questions whether there has been a deprivation of the components of a fair trial. It is again insisted by Appellant that the burden of proof has been and still resides in the Appellee and the same has not been sustained within the requirements of the rule of substantial evidence hereinbefore enunciated.

It is contended by Appellant that the Commission caused the burden of proof to be transferred to the Appellee (the Commission) at the

time of the hearing. The order issued by the Federal Communications Commission, released June 6, 1960, states as follows:

"IT IS ORDERED, that pursuant to the provisions of Section 309(b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding, which proceeding is to be further consolidated, in view of the matters mentioned above, with a hearing ordered this date in the matter of certain applications of Charles P. B. Pinson, Inc., . . . at the Commission's offices in Washington, D.C. and at such places in Tampa and St. Petersburg, Florida, as may be designated by the Presiding Examiner, on a date or dates to be hereafter specified, . . ."

Section 308 of the Communications Act (47 U.S.C.A. 308) provides:

"All applications for station licenses or modifications or renewals thereof, shall set forth such facts as the Commission by regulations may prescribe as to the citizenship, character and financial, technical and other qualifications of applicant to operate the station; . . ."

Under the terms and provisions of Section 309, entitled "Action upon Application," the burden of proof remains in the applicant to establish these requirements and such is not contested as stated in Stahlman v. Federal Communications Commission, supra, in which it is said:

"The Communications Act requires no more of the applicant for a radio license than proof of citizenship, character, and financial and technical qualifications to operate in the public interest . . ."

Although the foregoing is quoted out of context, it summarizes quite well the burden upon the applicant. It does not say that the applicant should account by public hearing for the truth or falsity of statements to the Commission, which were stated to be true under oath and not fully controverted, to question the extent of the control of the applicant in the operation of a radio station made in violation of another section of the Act (Sec. 310(b)); to ascertain if the applicant was disqualified

for reasons other than technical qualifications; to determine the area and population covered by Station KIK 578 in Tampa; to determine the area population to be covered by another applicant's proposed station in Tampa; and other cause foreign to the question of character qualifications.

The Appellee argues that this hearing was predicated upon Section 309(b) and thus was based solely on the question of character and was not an enlargement or change in the usual order set for hearing under Section 309(b).

It is true that this case was set for hearing on this alleged issue, and upon authority of that Section. However, the mere fact the Commission would use this subterfuge to avoid the procedural implications of a revocation and termination is not unknown and not unexpected. It has long been a theory of pleading under the Federal Rules of Civil Procedure and other adjectival systems that the legal effect of the document determines the consequences to be afforded the document.

The mere fact that the Commission desires to proceed upon the theory of a 309(b) hearing does not necessarily make it a 309(b) cause. The effect of these proceedings and the order of the Commission terminates the ability of the appellant herein to proceed further, short of judicial privileges. The findings of the Commission deprive the Appellant of the right to continue to operate Stations KIB 386, KIG 289 and KIG 843. This is nothing short of a revocation proceeding, no matter what the Commission desires to call it.

Therefore, with all of the new matter contained in the Commission's order of the comparative hearing dated June 1, 1960, the Commission brought this case within the purview of Section 312 of the Communications Act (47 U.S.C. 312).

It is therefore contended by the Appellant that the proceeding was controverted into a Section 312 proceeding (revocation). The citation quoted by Appellee has no bearing upon this fact, since in that case,

Independent Broadcasting Co. v. Federal Communications Commission, 89 U.S. App. D.C. 396, 193 F (2d) 900, 902, cert. den. 344 U.S. 837, the decision turned upon the question of the effect of a proceeding for a permit for construction, stating that there can be no revocation in a proceeding for a permit for construction since the permit is not final or approved until construction is completed.

The petitions in this case are upon existing and operating stations and are deemed to be vested rights although privileges which are being taken away from Appellant without full compliance with due process. The burden of proof was directly upon the Appellee and, as hereinbefore stated, the substantial evidence rule has been ignored.

In Universal Camera Corporation v. N.L.R.B., supra, the Court stated, at page 413:

"It is therefore difficult to escape the conclusion that the plain language of the statute directs a reviewing court to determine the substantiability of evidence in the record including the Examiner's report . . ."

The grant of the power to review applicant's petitions for renewals, etc., to the Federal Communications Commission, is not a grant of unlimited power, but only the right to control the range of the investigation in ascertaining what, within the compass of the Act, is proper to satisfy the requirements.

It is therefore the continued belief of the Appellant that the Commission has failed to sustain the burden of proof.

It is further specified in replying to the Appellee's statement that the argument of the Appellant contained in its main brief have not been answered but merely glossed over as "lacking merit." Therefore, it deserves no further reply.

CONCLUSION

The Appellant has noticed the Court with many affirmative and positive statements that the Commission has adduced insufficient evidence to satisfy the requirements of the substantial evidence rule set forth in the Administrative Procedure Act (5 U.S.C. 1000, et seq.). It is true there have been an enumeration of many inconsequential incidents which the Appellee claims shows a violation of Section 310(b) and on that basis the Appellant lacks character qualifications as a licensee of the Commission. It is contended that the enumeration of picayune and inconsequential acts does not show a lack of control by the original licensee when the main element is present and is as defined by an opinion of the Commission itself. The failure to assume the burden of proof and the attempt to disguise a controverted revocation proceeding is unpardonable.

Respectfully submitted,

JOHN A. HANLEY

Bacon & Hanley
524 Florida National Bank Bldg.
St. Petersburg, Florida

Attorneys for Appellant

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,441

CHARLES P. B. PINSON, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

APPEAL FROM A DECISION OF THE

FEDERAL COMMUNICATIONS COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 23 1963

Nathan J. Paulson
CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,441

CHARLES P. B. PINSON, INC.,

Appellant,

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FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

APPEAL FROM A DECISION OF THE
FEDERAL COMMUNICATIONS COMMISSION

JOINT APPENDIX

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SEYMOUR KRIEGER
NORMAN E. JORGENSEN

LAW OFFICES
KRIEGER & JORGENSEN
SUITE 514 WYATT BUILDING
777 FOURTEENTH STREET, N.W.
WASHINGTON 5, D. C.

TELEPHONE
EXECUTIVE 3 1635

September 25, 1958

Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D.C.

Dear Miss Morris:

On behalf of Charles P. B. Pinson, Inc.
we are filing herewith on FCC Form 401 in duplicate its appli-
cation for change in location and antenna of its 2-way station
KIG289 in the Domestic Public Land Mobile Radio Service at St.
Petersburg, Florida.

If there are any questions in connection
with this application, it is requested that they be referred
to the undersigned.

Very truly yours,

KRIEGER & JORGENSEN

By: Seymour Krieger
Seymour Krieger

COMMON CARRIER
BUREAU
SEP 25 1958
REC'D IN
LICENSE BRANCH

Auto-Phone Telephone Exchange

DIVISION OF CHARLES P. B. PINSON, INC. • 1221 ARLINGTON AVE. N. • ST. PETERSBURG, FLORIDA

ST. PETERSBURG EXCHANGE PHONE 5-6181
CLEARWATER EXCHANGE PHONE 3-5911
TAMPA EXCHANGE PHONE 2-087124 HOUR
TELEPHONE
ANSWERINGMOBILE RADIO
TELEPHONE SERVICEPOCKET-PHONE
RADIO PAGING

September 24, 1958

Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D. C.COMMON CARRIER
BUREAU

SEP 25 1958

REC'D IN
LICENSE BRANCH

Dear Miss Morris:

We are filing herewith on FCC Form 401 in duplicate our application for change in location and change of antenna of our two-way station KIG289 in the Domestic Public Land Mobile Radio Service at St. Petersburg, Florida.

It has been called to our attention that the proposal in the contract (Exhibit E) for the rendition of message service free of charge is in conflict with our obligations under our tariff and therefore, we will not carry out that proposal and any message service rendered to the lessor will be charged for in strict accordance with the provisions of our tariff on file with the Commission. The agreement will be modified just as soon as Mr. Pinson is able to return from Washington to St. Petersburg to negotiate a revision with the lessor. This application will be modified in the near future by the filing of the revised agreement.

The attention of the Commission is directed to the fact that the contract (Exhibit E) provides that the lessor may discontinue the use of the message service, in which event the rent scale set forth in paragraph 3 on page 5 of the agreement will be applicable.

The applicant feels confident that it will be able to negotiate the revision of the agreement with the lessor that will eliminate the problem referred to above concerning its obligations as a common carrier subject to tariff.

Very truly yours,

CHARLES P. B. PINSON, INC.

By

Charles P. B. Pinson
President

2

1 683 C2-P59³
K1G289

Form Approved
June 1954
Budget Bureau No. 1-100-10-10

United States of America
Federal Communications Commission

APPLICATION FOR NEW OR MODIFIED RADIO STATION
CONSTRUCTION PERMIT (Other Than Broadcasting)

(Read Instructions on Page 2)

7th Fl.

Name of applicant (See Instruction 4)
Charles P. B. Pinson, Inc.

Post office address
1221 Arlington Ave. N.
St. Petersburg, Fla.

4. Purpose of this application (See Instruction 3)

a. Class of station: Base
b. Nature of service: Domestic Public Land Mobile
c. New station: ☐
d. Changes in existing station (File No. 100-2-20007 Call K1G 289)
e. Modification of radio construction permit (File No. 100-2-20007 Call K1G 289)

If (a) or (d) have been checked, indicate nature of proposed construction:

1. Replace transmitter ☐ 4. Change location ☒
2. Add transmitter ☐ 5. Change antenna ☒
3. Increase power ☐ 6. Other changes (See separate sheet) ☐

What is applicant's principal business?
Mobile Radio & Telephone Answering

5. If applicant is a corporation:

Is applicant directly or indirectly controlled by any other corporation? If "Yes", give name and address of such controlling corporation: Yes ☐ No ☒

Under laws of what State or country is corporation organized? (If applicant is for common carrier radio facilities, attach certified copy of Articles of Incorporation.)
Florida St. Petersburg, Fla.

Is more than one-fourth of capital stock of such corporation owned or may it be voted by alien, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? Yes ☐ No ☒

Is any director or officer an alien? If "Yes", state name and position of each: Yes ☐ No ☒

Is the above-described controlling corporation in turn a subsidiary? If "Yes", attach additional sheets covering Paragraph 5, inclusive, for each company to and including the organization having final control: Yes ☐ No ☒

6. If application is made in behalf of an unincorporated association:

Purpose of the association: COMMON CARRIER
State number of alien members: BUREAU

Is any director or officer an alien? If "Yes", state name and position of each: Yes ☐ No ☒

100-2-20007
SEP 25 1958
REC'D IN
LICENSE BRANCH

Is stock to be sold other than parent to insure the purpose of raising money to construct and/or operate the proposed station? Yes ☐ No ☒

(Attach copy of the Articles of Association or bylaws, certified by an officer of the organization)

[illegible]

FCC Form 401		Page 3
13. (Continued) <u>22-1118</u>		17. Proposed location of transmitter
Type of oscillator circuit	Radio power supply for last radio stage	<div style="display: flex; justify-content: space-between;"> <div>Portable <input type="checkbox"/></div> <div>Mobile <input type="checkbox"/></div> <div>Portable-mobile <input type="checkbox"/></div> </div>
Type or class of modulation	Rated Current _____ Rated Voltage _____	Is permanently located at a fixed location give: State _____ County _____
Which radio stage is to be modulated?	State maximum percentage of modulation	City or town <u>ST PETERSBURG</u> Street and number _____ North latitude _____ West longitude _____
State maximum rated carrier power (Should not be exceeded by the power under Item 12(3).)	Indicate frequency range of the transmitter	18. Give commercial or Government RECEIVING station address systems known to be located within 3 miles of proposed location of transmitter.
14. a. What apparatus is included as an integral part of the transmitter for automatically holding the frequency within the allowed frequency tolerance? <u>on file</u>		19. Will the antenna extend more than 30 feet above the ground or natural formation, or if mounted upon an existing man-made structure, will it extend more than 30 feet above such structure? <u>See Exhibit D & E attached hereto</u> Yes <input type="checkbox"/> No <input type="checkbox"/>
b. Within how many cycles or within what percentage of the assigned frequency is this apparatus designed or guaranteed by the manufacturer to hold the operating frequency?		20. If the answer to the above question is "Yes", give the following:
c. State type, number, if any, and name of manufacturer of frequency-control apparatus		Overall height above ground to tip of antenna _____ ft.
d. Is frequency-control apparatus automatically maintained at constant temperature? Yes <input type="checkbox"/> No <input type="checkbox"/>		Distance to nearest aircraft landing area _____ ft.
15. a. What provision will be made for measurement and periodic checking of the station frequency? <u>as often as required</u>		Elevation of ground, at antenna base, above mean sea level _____ ft.
b. If a frequency measuring device is not to be installed, give name and address of frequency checking agency <u>Radio Service</u> <u>504 Oak St. S.E.</u> <u>St. Petersburg, Fla.</u> (If frequency checking agency is shown above, the answering sub-paragraphs of this question are not to be answered)		List any natural formations or existing man-made structures (hills, trees, water tanks, towers, etc.) which, in the opinion of the applicant, would tend to shield the antenna from aircraft and thereby minimize the aeronautical hazard of the antenna.
c. What type of frequency measurement or calibration apparatus will be used? <u>See</u>		See instruction No. 6 in reference to conditions under which FCC Form 401 must be completed
d. Within how many cycles or within what percentage will this apparatus measure the frequency? <u>See</u>		21. Is the transmitter to be operated with licensed operator on duty at a remote control point only? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
e. What methods will be used to check the calibration of this precision instrument? <u>See</u>		If "Yes", the following information must be furnished. (If licensed operator is to be on duty at the transmitter data required by this item may be omitted.)
f. How often will this instrument be checked? <u>See</u>		a. Location of remote control point (If more than one remote control point is involved, attach supplementary sheet giving location of each remote control point, plus of correction, etc.)
16. Estimated cost to establish proposed facilities		State _____ County _____ City or town _____ Street and number _____
a. Transmitter (ready for service)	\$ _____	b. What is the air-line distance between transmitter location and remote control point? <u>0.000000</u>
Other items (state the nature and amount applicable to each)	\$ <u>0.000000</u>	c. By what means will the transmitter be rendered inoperative to unauthorized persons? <u>See</u>
TOTAL ESTIMATED COST \$ <u>0.000000</u>		d. Can transmitter be placed in an inoperative condition from the remote control point? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
b. Application for instruments of authorization by a radio telephone or telegraph common carrier involving expenditures in excess of \$50,000 shall include a statement showing the principal items of property and purchases represented by such sums. Within 90 days after completion of the construction requested herein the applicant shall file with the Commission a summary of the expenditures made and the accounting pertained thereon.		

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<p>21. (Continued)</p> <p>a. Describe below the equipment to be used to enable the operator of the remote control point to determine when there is a deviation from the terms of the station license or when operation is not in accordance with the Commission's rules governing the class of station involved.</p> <p>General Electric Remote Control RC-4 information on file</p>		<p>25. If the application is for any class of station in the experimental service, attach supplementary statements as required for the particular class of station.</p> <p>DNA</p>	
<p>22. Location of receiving equipment associated with this station same as item # 17</p>		<p>26. If application is for a new construction permit, the construction, if authorized, will be commenced by</p> <p>30 days of grant</p> <p>Construction will be completed by</p> <p>90 days of grant</p>	
<p>23. Location of receiving equipment associated with this station</p> <p>State: <u>Florida</u> County: <u>Pinellas</u></p> <p>City or town: <u>St. Petersburg</u> Street and number: <u>13450 Sandy Blvd.</u></p> <p>Latitude: <u>27 52 15.17</u> Longitude: <u>82 37 02.75</u></p>		<p>27. If this application is for modification of construction permit and extension of time is required, applicant should answer the following:</p> <p>a. Applicant requests that the date of required commencement of construction be extended to</p> <p>DNA</p> <p>b. That the date of required completion of construction be extended to</p> <p>DNA</p> <p>c. Applicant represents that this construction cannot be completed within the time specified in the existing construction permit due to</p> <p>DNA</p>	
<p>24. List frequencies, call letters, and location of stations to be regularly received</p> <p>Mobiles 158.49, 158.55 158.51 - 158.57 MHz</p>		<p>28. Any exhibits referred to herein and those attached hereto, described and identified as follows, are certified to be true and correct. (List here all exhibits attached to the application)</p> <p>Exhibit A item # 25 Exhibit B Engineering Exhibit C Financial Statement Exhibit D WISF Data Exhibit E WISF-Pinson contract</p>	
<p>25. In case of common carrier operating in either the fixed public or fixed public mobile services, state name of organization, agency, or person operating the receiving end of the circuit as required by regulations governing these services</p> <p>DNA</p>		<p>29. The applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a construction permit in accordance with this application.</p> <p>Signed this <u>19th</u> day of <u>September</u>, 19<u>58</u></p>	
<p>26. Is station to be open in public correspondence? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If "Yes", state hours during which station will be open for such service</p> <p>24 hours a day, 7 days a week</p>		<p>30. The applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a construction permit in accordance with this application.</p> <p>Signed this <u>19th</u> day of <u>September</u>, 19<u>58</u></p>	
<p>27. Will any charge be made for handling public correspondence? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If "Yes", state schedule of charges</p> <p>Tariff # 4 on file with commission</p> <p>(The statement of rates required hereto does not constitute a filing of schedules of charges required by section 203 of the Communications Act of 1934, as amended, under the Communications Service.)</p> <p>State terms of division of charges with other stations</p> <p>None</p>		<p>31. Signature by applicant below appropriate classification</p> <p>Charles J. E. Pinson Inc.</p> <p><i>Charles J. E. Pinson</i></p> <p>32. Signature by applicant below appropriate classification</p> <p><input type="checkbox"/> Individual Applicant</p> <p><input type="checkbox"/> Member of Applicant Partnership</p> <p><input checked="" type="checkbox"/> Officer of Applicant Corporation or Association</p> <p><input type="checkbox"/> Officer of Governmental Entity Compliant under the Jurisdiction to Sign for the Applicant</p>	
<p>28. Is station to be used in the private service, will the service of the station be available for any aircraft desiring to make use of it?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>During this time will station be open for communication with such aircraft?</p> <p>DNA</p>		<p>33. Subscribed and sworn to before me</p> <p>on <u>19th</u> day of <u>September</u>, 19<u>58</u></p> <p><i>Oliver F. Schenker</i></p> <p>Notary Public, State of Florida & Large</p> <p>My commission expires</p>	
<p>29. Give definite date why the operation of the station will be in the public interest, interest, or necessity.</p> <p>See exhibit A attached</p>		<p>34. Give definite date why the operation of the station will be in the public interest, interest, or necessity.</p> <p>See exhibit A attached</p>	

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EXHIBIT A item # 26

1. We have experienced considerable difficulty at our present location as the Commission has been advised because of high noise level and other factors.
2. The change of location will give an increased height above average terrain, thus increasing the communication coverage available to the general public. The dead spots will tend to be eliminated, thus providing a much higher class of service to the general public at large on a 24 hour-7 day a week basis at no increase in cost to the general public.
3. Emergency power will be available 24 hours a day so as to insure continued communications during the time of power interruptions due to hurricanes and other weather disturbances.
4. The capital investment of the general public who desire to own their own unit will be less since a 10 watt unit will render better service at this location than the 25 watt units now provides at the present location. However we plan to continue to furnish as standard equipment 25 watt units as rental equipment.
5. The safety of vessels will be greatly increased as the service range is extended to sea.
 - A) The local Coast Guard cited us for the saving of lives during the May Day operation last year, during which the Tug Hero was sunk with three men aboard. The station KIG 239 rendered May Day service during the emergency at no charge for period in excess of four hours. We coordinated the efforts of all personell and agencies involved in the rescue of the people of the Tug Hero. We normally average about 4 May Days per year. The last being when the Dredge Dania sank in March of 1958 and all personell were removed to safety. Winds were approximately force 7 to 8.
6. The increased investment which is necessary is merely one indication of this corporations criterion to provide the best communication service possible to the general public and to make every improvement possible in our system by utilizing the latest methods and equipment.

COMMUNICATIONS CARRIER
BUREAU
SEC 25 1058
RECEIVED IN
LICENSE BRANCH

ENGINEERING DATA OF EXHIBIT A

1. There is no top loading on the antenna system of WTSP, St. Petersburg, Florida. See item IV, 1, (b) of Engineering report title Modified Directional Antenna WTSP, St. Petersburg, Florida by HOLLEY & HILLEGAS, consulting engineers Atlanta, Georgia dated August 2, 1948 and on file with the Commission.
2. Description of method of installation of existing 3 1/8 inch, 452 Andrews Coaxial line.
The following is quoted from item II, page 9, of Proof of Performance Directional Antenna, WTSP, of St. Petersburg, Florida, by HOLLEY & HILLEGAS, consulting engineers Atlanta, Georgia dated August 2, 1948 and on file with the Commission "the FM antenna is fed by a 3 1/8 inch coaxial line running up the center of the steel tower and insulated therefrom to a point approximately 100 degrees from the base. A connecting strap is provided for accurately adjusting this grounding point. No isolation unit is provided on the FM line, it being grounded where it emerges from the base of the steel tower."
WTSP-FM is no longer in operation. The coaxial line associated with the described antennas will be secured to and grounded at exactly the same points as the existing #452 line.
3. Adjustment method covered in item III, Page 9 of Report shows in item 2. Adjustment of Isolation Coil and FM Line Ground Point.
"With the FM Coaxial line and the isolation coil disconnected at the base, the resistance and reactance of the antenna was measured.
R=38 ohms X=88 ohms
The insulation filter was reconnected and the shunt capacity adjusted for the same value of resistance and reactance. After completing this adjustment, the FM coaxial line was reconnected at the base and the grounding point adjusted until the base resistance and reactance was returned to the original value. The resistance curve of this center tower was then run in the usual manner."

COMMON CARRIER
BUREAU
SEP 25 1959
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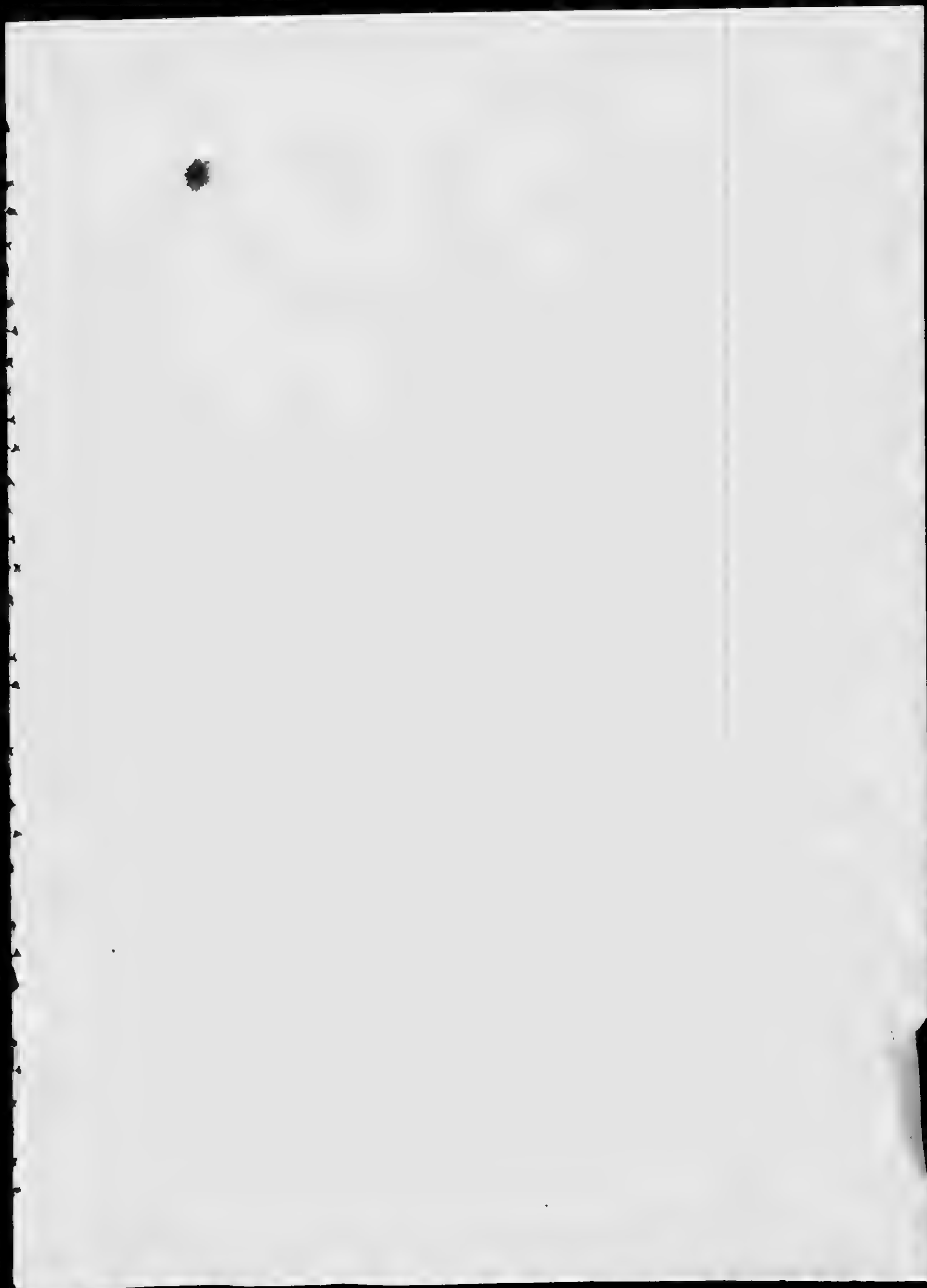
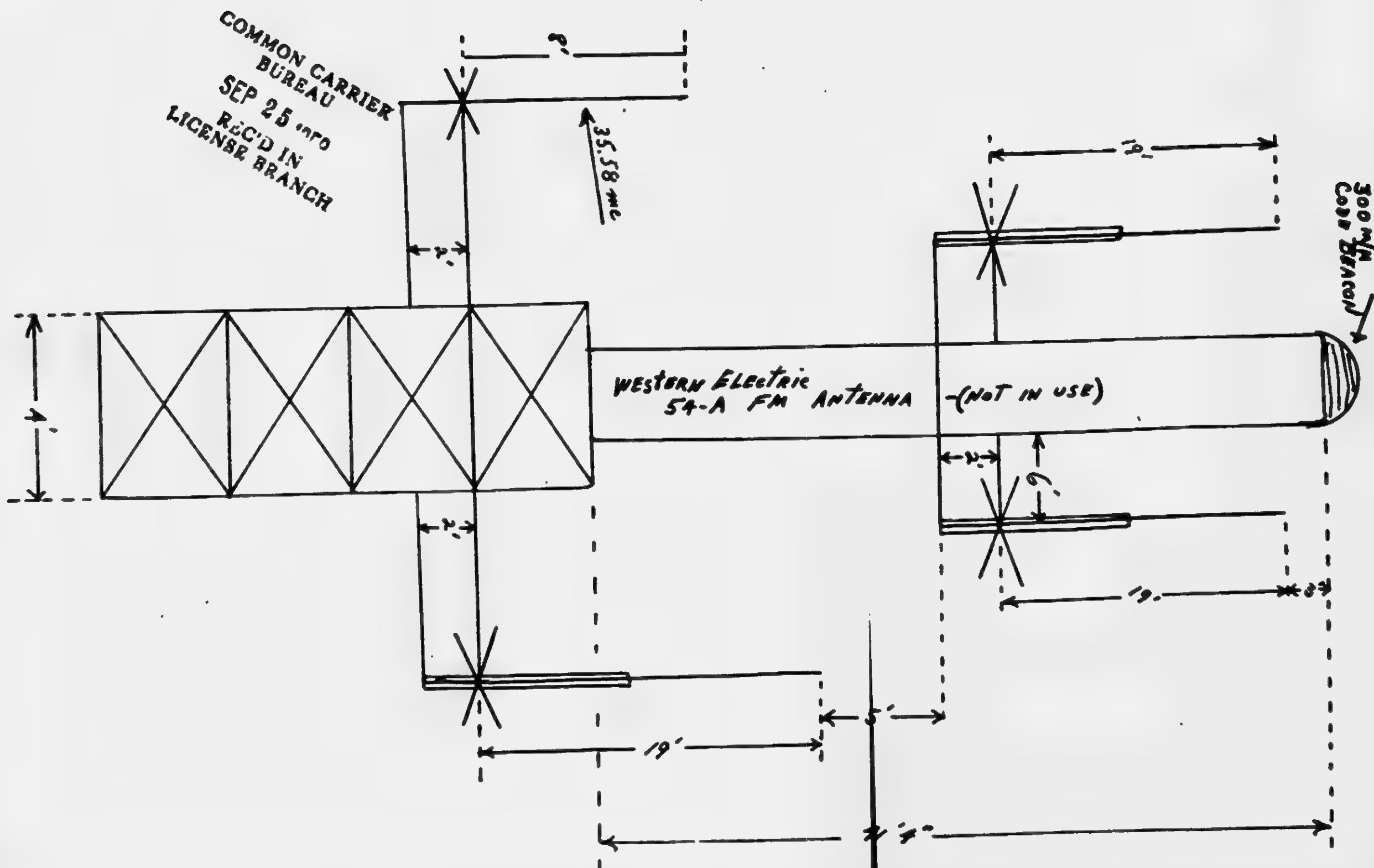


Exhibit A
1 of 2

[9]

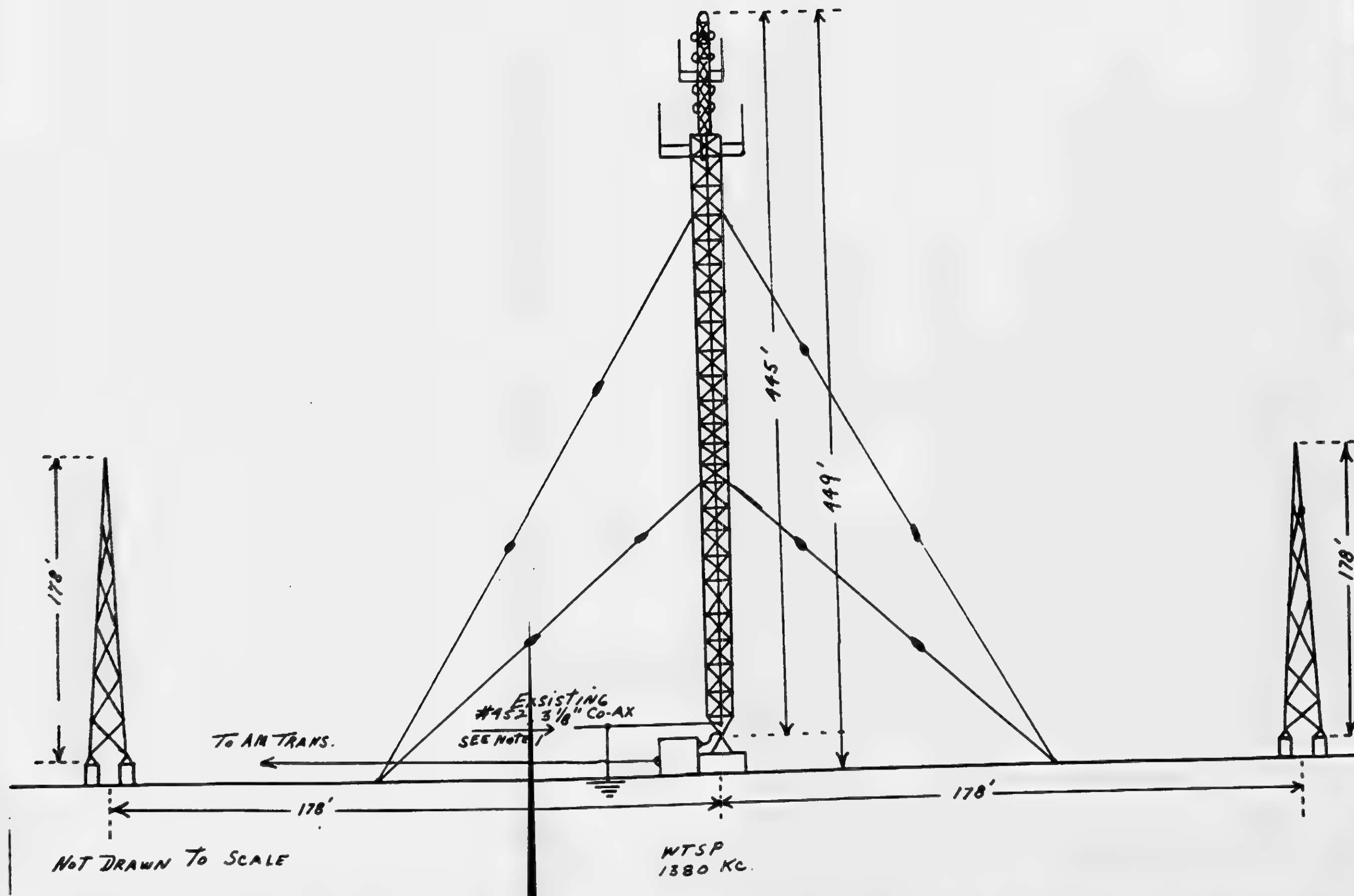
NOT DRAWN TO SCALE



10
[10]

EXHIBIT A
2 of 2 10

SEE ENGINEERING DATA ATTACHED HERETO.



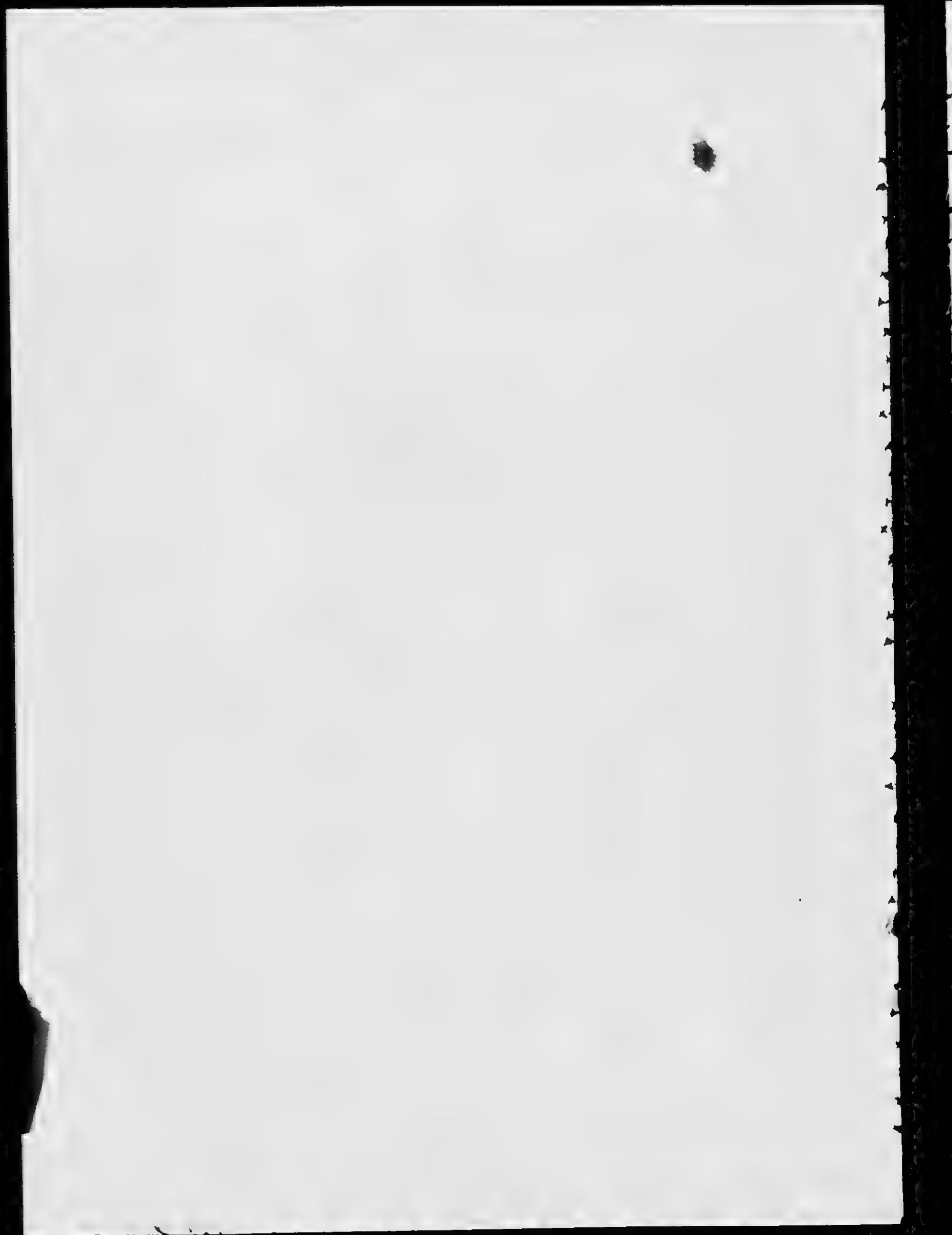


EXHIBIT B

ENGINEERING REPORT RE
APPLICATION OF
CHARLES P. B. PINSON, INC.
CHANGE IN TRANSMITTER LOCATION OF
KIG-289

INTRODUCTION:

Charles P. B. Pinson, Inc., owners and operators of a two-way signalling service at St. Petersburg, Florida, propose to move the transmitter location of KIG-289. KIG-289 operates with a base station transmitter frequency of 152.21 megacycles and a base station receiving frequency of 158.67 megacycles.

The applicant proposes to locate the transmitting antenna near the top of the existing WTSP antenna as shown in exhibit VI and VII. The applicant proposes to feed the antenna through 440 feet of 3-1/8 inch transmission line Andrews #452 that is already installed at the WTSP site. The applicant will use a General Electric ET-9C transmitter with a rated output of 250 watts. This transmitter with the communications products antenna model 200-509 will give an effective radiated power of 822 watts.

The proposed operation is predicted to serve the entire area now served by KIG-289.

The following table lists the pertinent data:

TABLE I			
<u>RADIAL</u>	<u>DIRECTION</u>	<u>AVE. ELEV.</u>	<u>EFF. ANT. HEIGHT</u>
1	N O E	0.5 Ft.	443 Ft.
2	45	7.0	436.5
3	90	3.0	440.5
4	135	0.5	443
5	180	2.0	441.5
6	225	26.0	417.5
7	270	13.5	430.0
8	315	7.0	436.5

[12]

As shown in Exhibits VI and VII, other antennas will be located on top of the WTSP tower. The applicant proposes to put in any filters that might be required in order to eliminate interference. All transmission lines feeding the high frequency antennas will be insulated from the WTSP tower for approximately the first 100 electrical degrees in order to isolate them from the 1380 kc operation.

All calculations and predictions are based on the Standards of Good Engineering Practice of the Federal Communications Commission.

Respectfully submitted,

/s/ Edward W. Deeters

September 18, 1958

[13]

DISTRICT OF COLUMBIA: SS

EDWARD W. DEETERS, being first duly sworn upon his oath, deposes and says that he is a consulting radio engineer employed by WILLIAM L. FOSS, INC., that a statement as to his qualifications is on file at the Federal Communications Commission, that he is a registered professional engineer in the District of Columbia, that the foregoing attached statement and all appendices were prepared under his direct supervision, that the facts stated therein are true of his knowledge, except as to such statements therein made upon information and belief, and that as to such statements he believes them to be true.

/s/ Edward W. Deeters

[14]

EXHIBIT C

CHARLES P. B. PINSON

Certified as Correct as of December 31, 1957

ASSETS

Cash First National Bank	\$ 865.80	
Cash Florida National Bank	<u>1,372.65</u>	\$ 2,238.45
Accounts Receivable (current)	4,765.48	
Accounts Receivable (past due)	<u>2,477.32</u>	
Construction Jobs		
Completed three	25,550.00	
none jobs $\frac{0}{100}$ completed		<u>33,792.80</u>
Total Current Assets		\$ 36,031.25
Trucks, Cars, Equipment, & Machinery		32,704.05
Real Estate Owned		105,000.00
Other Assets: Agreement for Deed Contracts Secured by Warranty		
Deeds & Collected by First National Bank	71,098.20	
Leases and Conditional Sales Contracts	<u>7,164.38</u>	
Purchase of KIB 386 Tampa, Fla.	<u>4,500.00</u>	
TOTAL ASSETS		256,497.88

LIABILITIES

Accounts Payable (current)	\$ 683.34	\$ 683.34
Accounts Payable (past due)		<u>683.34</u>
Total Current Liabilities		
Mortgages Payable (Long Term)		
First Federal Savings & Loan		60,474.08
Mortgages & Conditional Sales Contracts		
(Long Term) others		<u>13,809.50</u>
Total Liabilities		74,966.92
Net Worth (including Capital & Surplus)*		<u>181,530.96</u>
TOTAL LIABILITIES		\$256,497.88

I do hereby certify that to the best of my knowledge and belief that this is a true and correct report.

/s/ Charles P. B. Pinson
President

* Note ---This Balance Sheet does not reflect the Corporate notes held by Charles P. B. Pinson.

SEE ATTACHED AMENDMENT TO BALANCE SHEET.

[15]

14

[15]

AMENDMENT TO BALANCE SHEET

September 19, 1958

This is to certify that the December 31, 1957 Balance Sheet is substantially correct as of this date.

Real estate owned has been reduced \$35,000.00

Cash on hand is \$4,042.68

Accounts Receivable are \$6,242.95

The net worth remains substantially the same.

I do hereby certify that to the best of my knowledge and belief that this is a true and correct report.

/s/ Charles P. B. Pinson
President

[Rec'd in License Branch Sept. 25, 1958 — Common Carrier Bureau]

[16]

EXHIBIT D

September 12, 1958

Mary Jane Morris
Office of the Secretary
Federal Communications Commission
New Post Office Building
Washington 25, D. C.

Dear Miss Morris:

WTSP, St. Petersburg, Florida requests authorization to install (4) four, high frequency communication type antennas, on the WTSP No. 2 center tower.

Three of these antennas will be used for the Common Carrier Service of licensee Charles P. B. Pinson, Inc., St. Petersburg, Florida. The call letters are KIG-289 and KIG-843. The frequencies are 152.21 Mc, 158.67 MC and 35.58 MC. WTSP and Charles P. B. Pinson, Inc. are applying simultaneously for FCC authorization and approval for the above installation.

The forth communications antenna will be used by WTSP for Remote Pickup Mobile radio service, licensed to WTSP, under the call letters of KD-6312, on 170.15 MC.

Type of antennas to be used are:

- (3) Three, Communications Products, type 200-509 MC.
- (1) One, Andrews Folded Unipole, type 900-1.

[17]

Method of antenna mounting:

All antennas to be side mounted and below light beacon to eliminate air traffic hazard. Side mount of antennas to minimize any loading effect on the main tower.

Method of feeding the communication antennas:

The WTSP No. 2 tower is a four-foot square, uniform cross section, guyed radiator. The height above the base insulator of this element, including an 8 bay FM antenna is 445 feet. The FM antenna is no longer in use. The transmission lines for the communication antennas will be fastened to and run up the center of the tower following an insulated 3 1/8 inch coaxial line which formally fed the FM antenna. WTSP believes this method of installation will have a negligible effect on the normal operation of the tower. See exhibit No. A.

After installation WTSP will submit to the Commission an Engineering Proof of Performance Report, with recorded operational data and field strength measurements for comparison of changes, if any, with the Modified WTSP Proof of Performance Report submitted and on file with the Commission as of July 8, 1955.

It is respectfully requested that authorization be issued to WTSP at the earliest moment.

Very truly yours,
/s/ C. Frank Cordaro,
Technical Director

* * *

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EXHIBIT E
AGREEMENT

THIS AGREEMENT, made at St. Petersburg, Florida, on this 11th day of September, 1958, by and between WTSP, INC., operators of radio station WTSP, as Party of the First Part, and CHARLES P. B. PINSON, INC., as Party of the Second Part, both parties being Florida corporations with their principal places of business in St. Petersburg, Florida,

WITNESSETH:

THAT WHEREAS, the Party of the First Part operates radio station WTSP and the Party of the Second Part operates an auto phone division handling telephone calls from motor vehicles within the St. Petersburg area with mobile equipment attached to automobiles; and

WHEREAS, the parties hereto have agreed upon the mutual furnishing of services to each other as hereinafter specified.

NOW, THEREFORE, in consideration of the mutual promises and agreements, the Party of the First Part agrees to furnish the following to the Party of the Second Part, all to be installed and operated at the sole expense of the Party of the Second Part:

1. Second Party may construct a small frame building approximately 10' x 12' to be located at the base of the main tower of Radio Station WTSP which is located at 11450 Gandy Boulevard, the tower being located at North Latitude 27 degrees 52 minutes and 15.17 seconds and West Longitude 82 degrees, 37 minutes and 02.76 seconds.

2. Transfer to Second Party all rights, title and

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use in the existing Andrews Corporation 3 1/8" transmission line #452 now installed on the tower.

3. Permit the installation of two Communications Products antennas 200-509 MC, 152.21 MC and 158.67 MC and one Andrews folded unipole antenna on 35.58 MC with associated lines on the top section of

First Party's tower. The transmission lines associated with the antenna shall be Habirlene covered so as to insulate the sheath of the cable from the tower.

4. Allow the connection of an electrical line from the building mentioned in subparagraph 1 above to the existing electrical system of First Party. The electrical current so used shall be metered and paid for in the following manner: The net cost of the WTSP power bill shall be divided by the total KWH, thus obtaining a net cost per KWH. The KWH used by the Party of the Second Part shall then be multiplied by the net cost per KWH for a net monthly cost to the Party of the Second Part. This cost shall be billed to Second Party and paid monthly.

5. The Party of the First Part shall be responsible for the painting, maintenance and lighting of the tower according to all regulations of the FCC and CAA and any other regulating bodies having jurisdiction, and especially as may be required by FCC.

6. The control lines and facilities of the Party of the Second Part, both telephone company and private, may cross the lands of the Party of the First Part at such locations as may be agreed upon by the First Party.

7. It is understood that the associated transmitters and receivers of KIG-289 and KIG-843 shall be located in the building described in subparagraph 1 hereof and all lines shall

[20]

also terminate at said building which may be located by Second Party and made non-accessible to unauthorized persons at all times. It is further understood that Party of the Second Part shall at all times have access to said building and full and absolute control thereof, and of all of the facilities in the said building in compliance with the rules and regulations of the Federal Communications Commission.

8. The antennas shall, by Party of the Second Part, be made fast to the top section of the tower with suitable connection brackets,

and the associated lines shall be fastened to the existing #452 line so that the existing 1/4 wave electrical isolation of the line and tower is maintained. The additional lines shall be grounded in the same relationship to the tower and at the same place as the existing #452 line. It is further understood that the engineering staffs of the two parties will cooperate with each other fully so as to eliminate any possible difficulty in carrying out the above provisions.

In consideration of the above agreements the Party of the Second Part agrees to furnish to the Party of the First Part, free of charge, the following goods and services:

1. Furnish one 25 watt General Electric Progress Line Mobile Unit installed in an automobile of the First Party and agrees to maintain the same for use on KIG-289.

2. Furnish all necessary message service free of charge on KIG-289 for 24 hours a day. The number of calls per day shall be unlimited, but each call shall be limited to a maximum time of three minutes except in cases of emergency.

3. Furnish a termination block in the transmitter receiver building to be constructed, which is to be connected

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to the KIG-289 receiver so as to feed the audio direct to the control room.

4. Furnish a remote control so that calls can be dispatched direct from the WTSP control room. The Party of the First Part is to install, at its cost and expense, all connecting lines between the transmitter receiver building and its control room.

5. Party of the Second Part will furnish one older front mount mobile unit 10 watts ES-12 type GE to WTSP to be converted by it and used by it or its remote broadcast frequency. This equipment is not to be used on KIG-289 frequency.

6. Install at the expense of WTSP, but at the net cost to CHARLES P. B. PINSON, INC., one Communications Products antenna 200-509 on

approximately 170 MC connecting transmission line and allow WTSP to install the associated receiver in the transmitter receiver building. The erection contractor has estimated that the erection cost of the additional antenna will be approximately \$200.00 plus brackets and hardware.

Both parties further agree and understand:

1. That this contract is subject to all of the rules and regulations of the Federal Communications Commission and the granting of permission by the said Commission to install the above facilities; also subject to the provisions of the tariff of CHARLES P. B. PINSON, INC. as now filed or as may be amended in the future; that all operations shall be under the direct control and supervision of the personnel of CHARLES P. B. PINSON, INC. and under the provisions as provided in said tariff and Form 2A attached and made a part hereof.

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2. The exchange service shall be rendered to WTSP upon completing and putting into service the facilities of KIG-289 on the tower of WTSP. Second Party hereby agrees to make every effort to effect the installation of the facilities at the earliest possible moment.

3. That in the event the Party of the First Part desires to discontinue the use of the facilities of KIG-289 for any reason whatsoever, the equipment of KIG-289 will be returned to the Second Party and Second Party shall then pay monthly rental in advance each month to the Party of the First Part on the following schedule. For the first two years of the agreement, \$100.00 per month; during the second two years of the agreement, \$120.00 per month; during the third two years of the agreement, \$140.00 per month; during the fourth two years of the agreement, \$160.00 per month; and during the fifth two years of the agreement, \$180.00 per month.

This contract shall run for a period of ten years beginning with the date of the completion of the installation of the facilities.

If, in the event that after the installation of KIG-289 and KIG-843 facilities when tests are run, it is impossible for WTSP to maintain a radiation pattern suitable to the Federal Communications Commission or if, after the said installations are made the facilities of KIG-289 and KIG-843 fail to function properly, the Parties hereto shall make every effort to correct such difficulty, but if it is found that no correction can be made, this contract shall be immediately terminated and shall be null and void and the Party of the Second Part shall remove all of its equipment and property from the property of the

[23]

Party of the First Part.

Party of the Second Part assumes all of the risks and costs of moving, relocating or changing the equipment of the Party of the Second Part if WTSP be required for any reason to make antenna changes and changes in its tower necessary in order to properly carry out the functions of its broadcast station, and Second Party shall pay the costs of any changes in its facilities occasioned by such WTSP changes.

The Party of the Second Part assumes and agrees to pay and hold harmless the Party of the First Part from all claims, costs, expenses, including legal expenses, and judgments occasioned by the installation of its equipment and building, in the removal of its building equipment, or arising out of the presence of its building, equipment and facilities. The Party of the Second Part shall carry its own fire, wind-storm and liability insurance and assume all of the risk of loss to its own property and equipment.

Time is of the essence of this agreement and it shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the two corporations have executed this agreement through their proper officers and affixed their corporate

seals on the day first above written.

WTSP, INC.

By /s/ [Illegible]

First Party

ATTEST:

(CORPORATE SEAL)

In the Presence of:

/s/ Neil Spencer

/s/ C. Frank Cordow

[24]

CHARLES P. B. PINSON, INC.

By /s/ Charles P. B. Pinson

Second Party

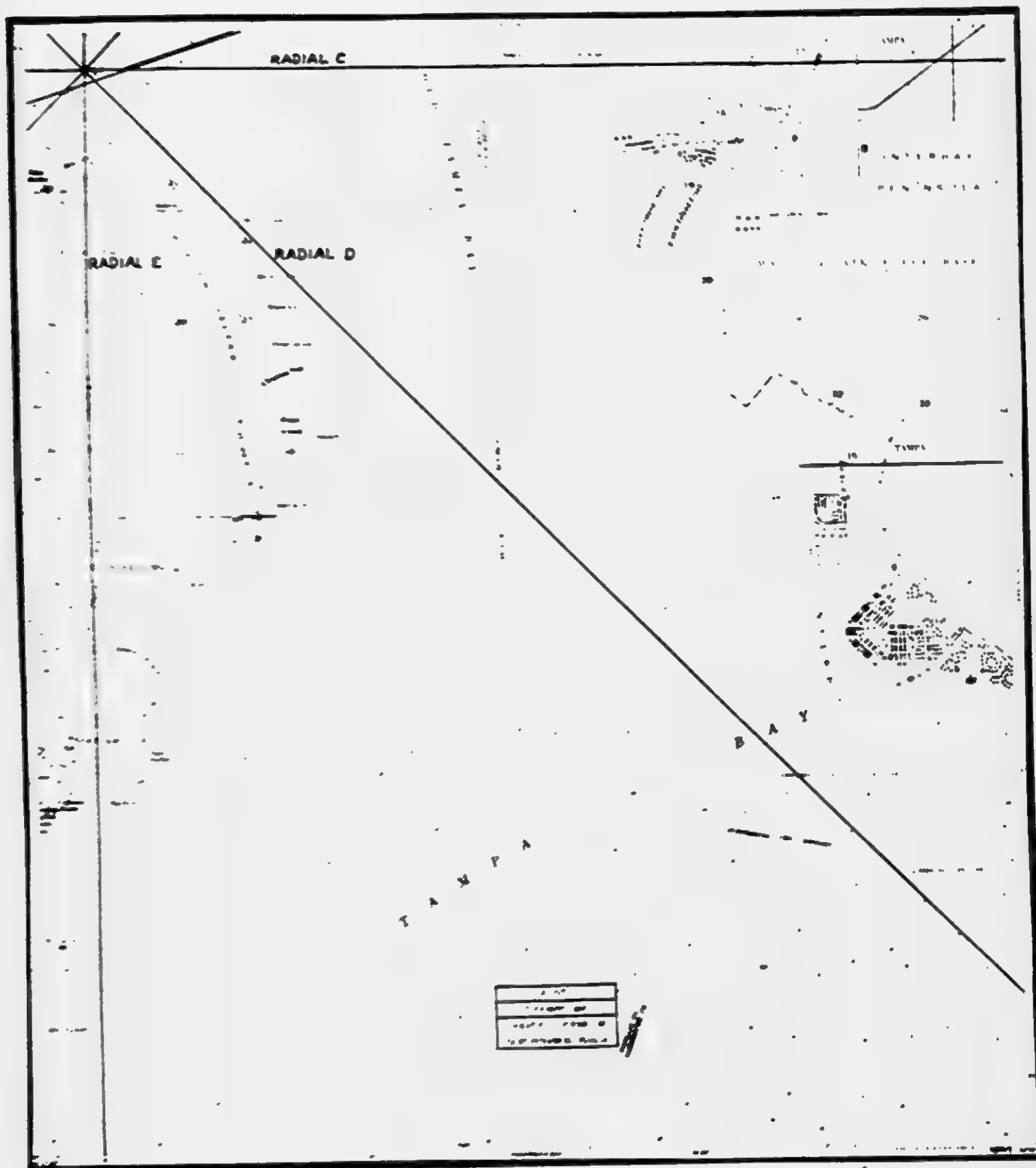
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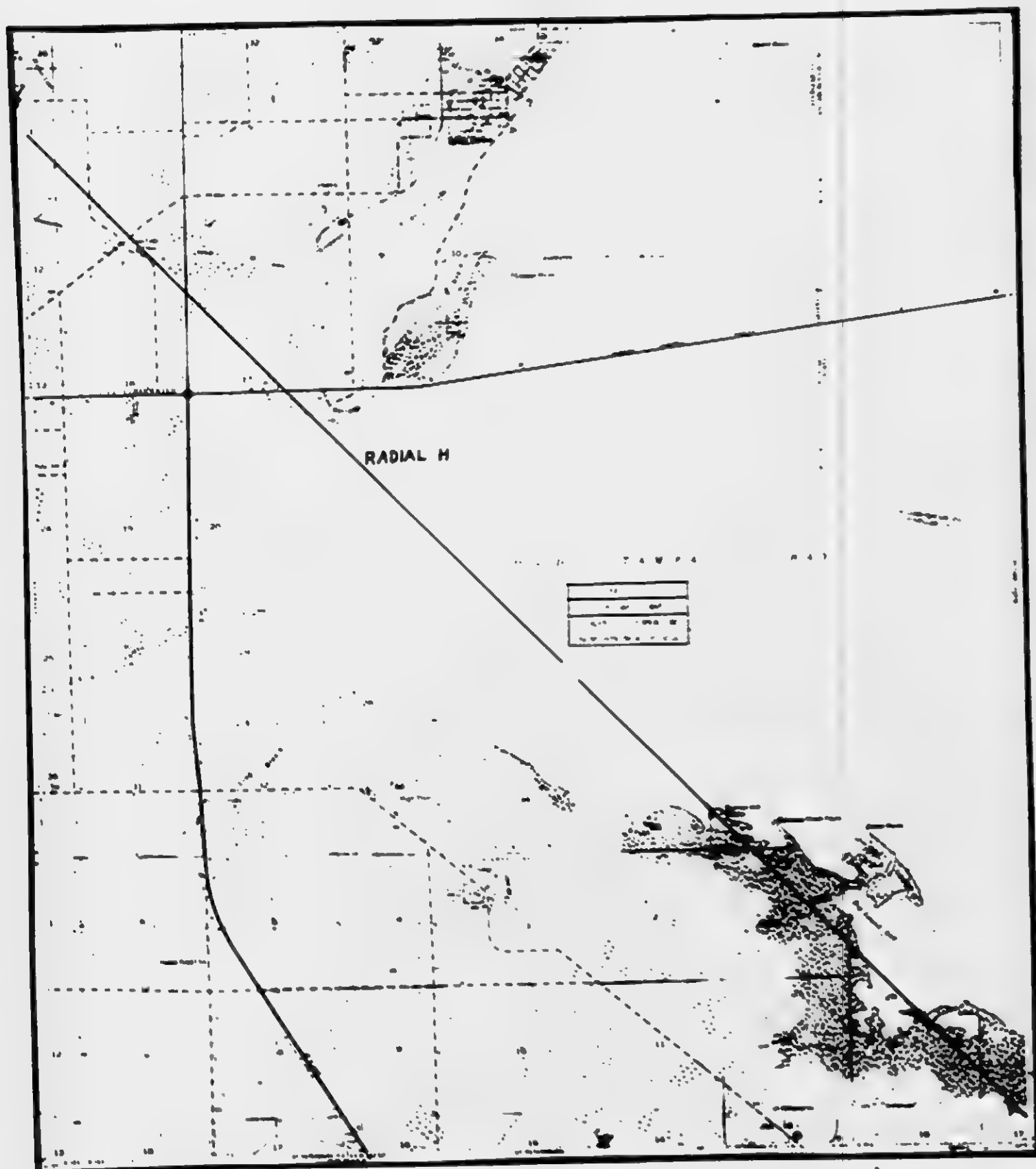
(CORPORATE SEAL)

In the presence of:

/s/ Neil Spencer

/s/ C. Frank Cordow

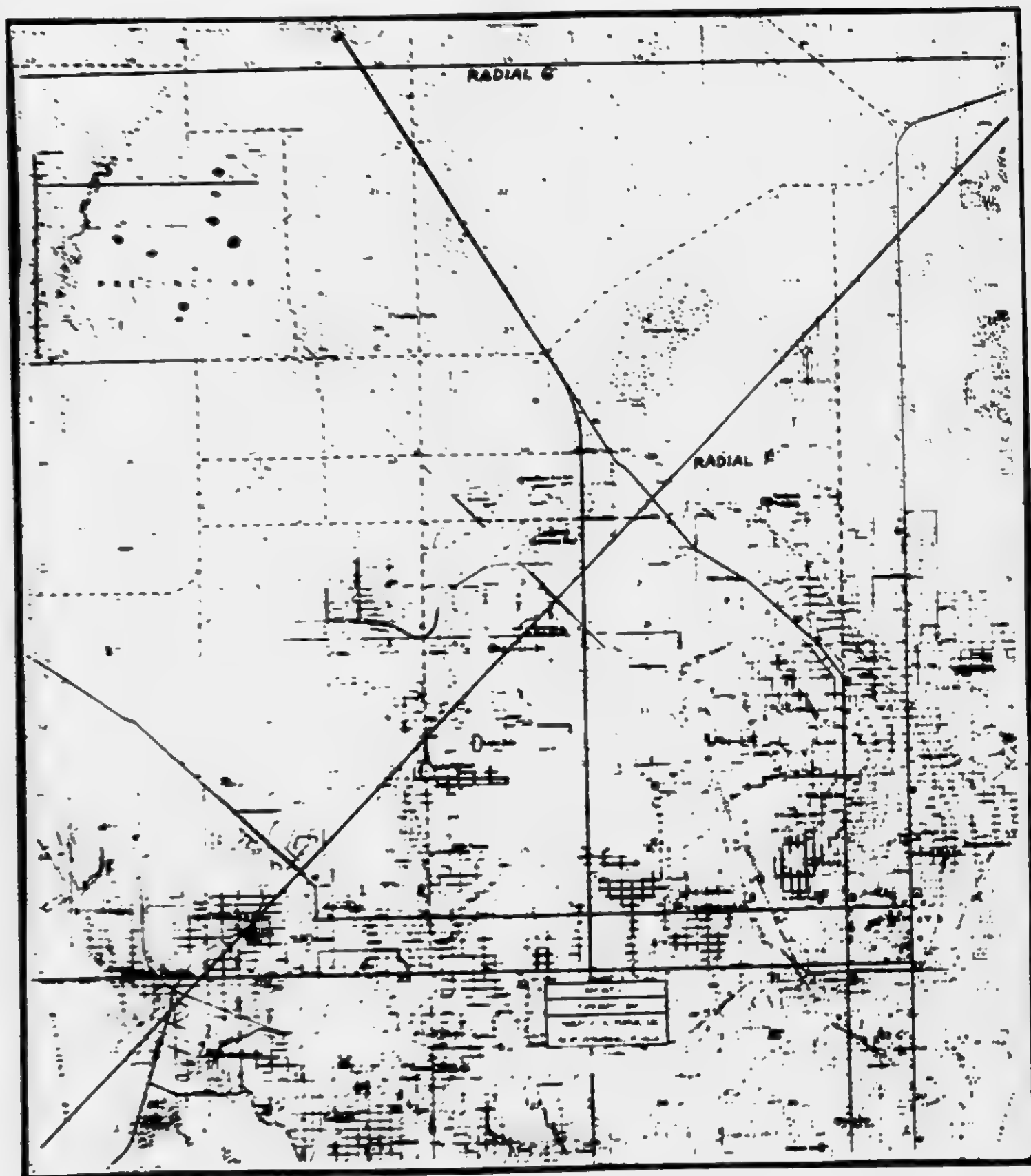


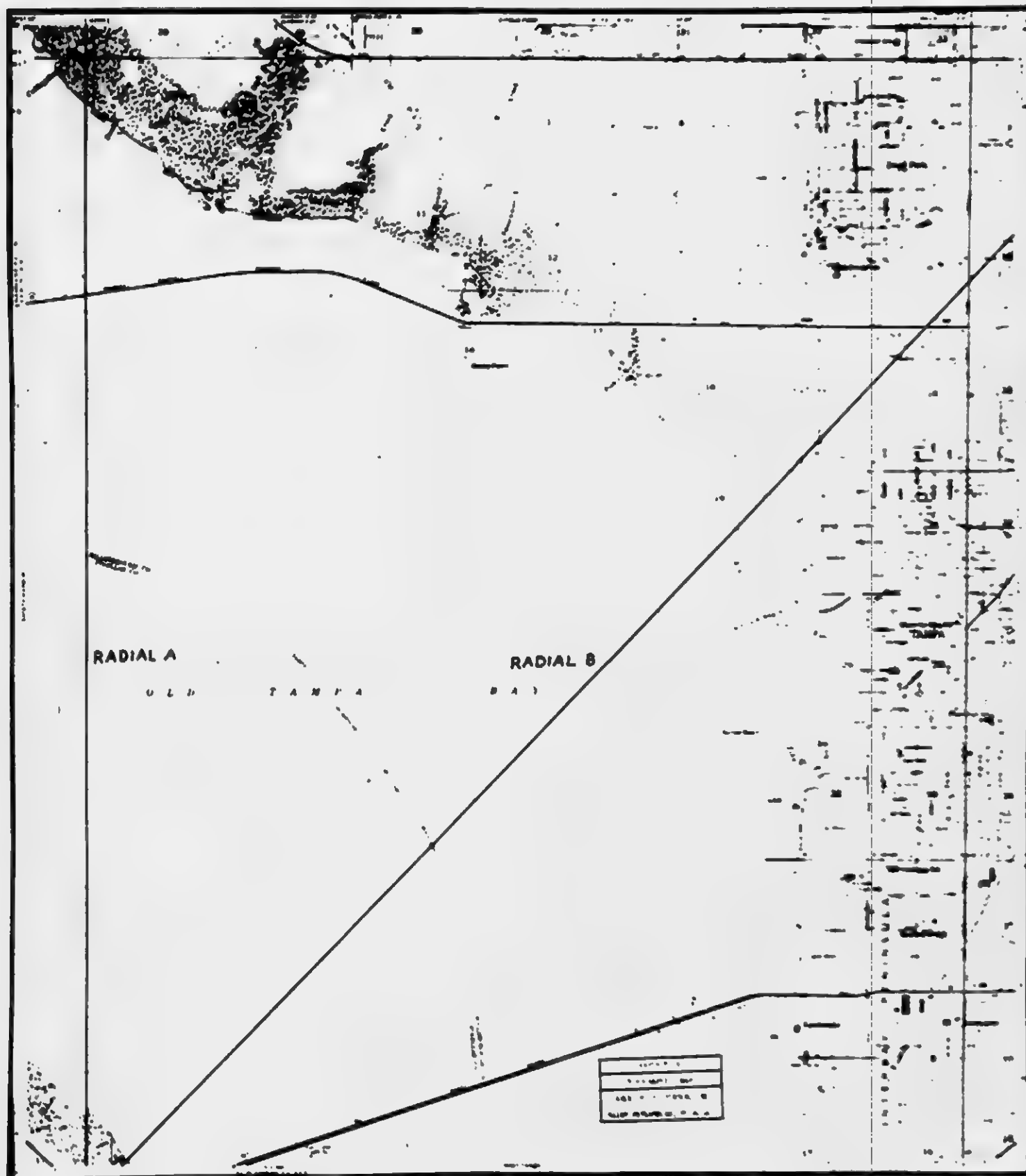


[27]

24

[27]

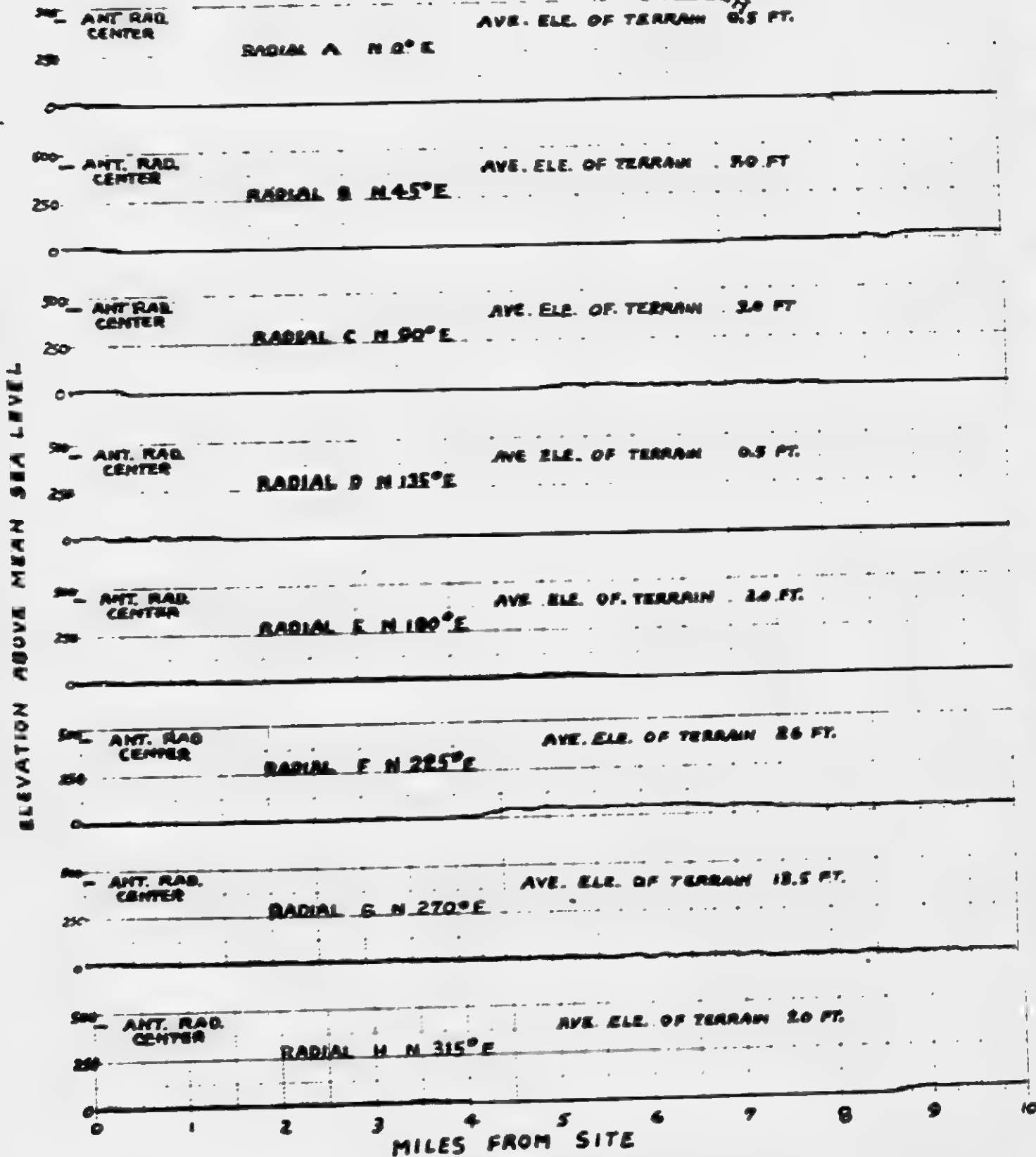


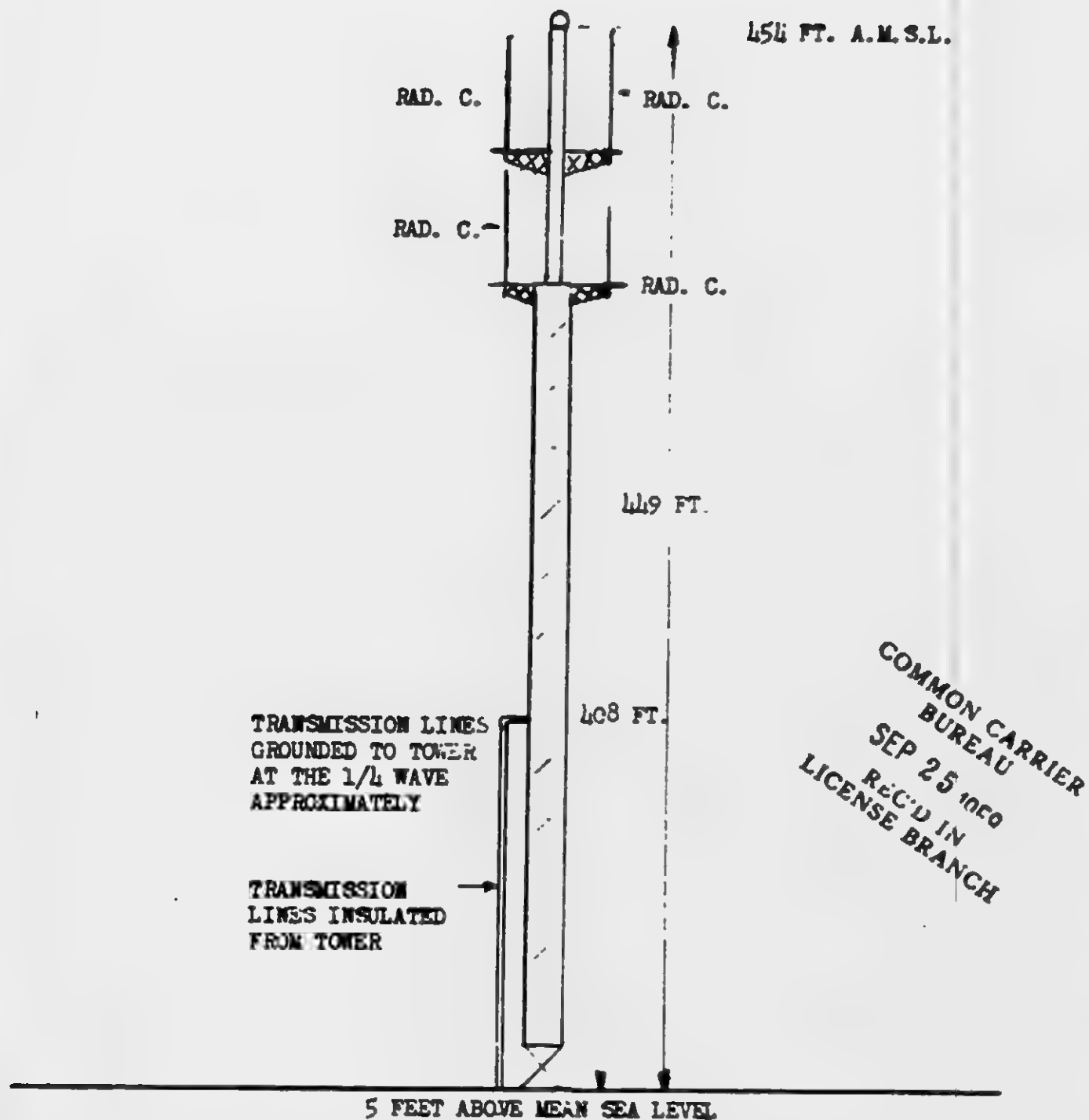


1. NAME
2. ADDRESS
3. PHONE NO.
4. BUSINESS NO.

COMMON CARRIER
BUREAU
SEP 25 1952
REC'D IN
LICENSE BRANCH

20





WTSP TOWER
N. LAT. 27° 52' 15.17"
W. LONG. 82° 37' 02.76"

EXHIBIT VI

ANTENNA PLAN

CHARLES P. B. PINSON, INC.

SAINT PETERSBURG, FLORIDA

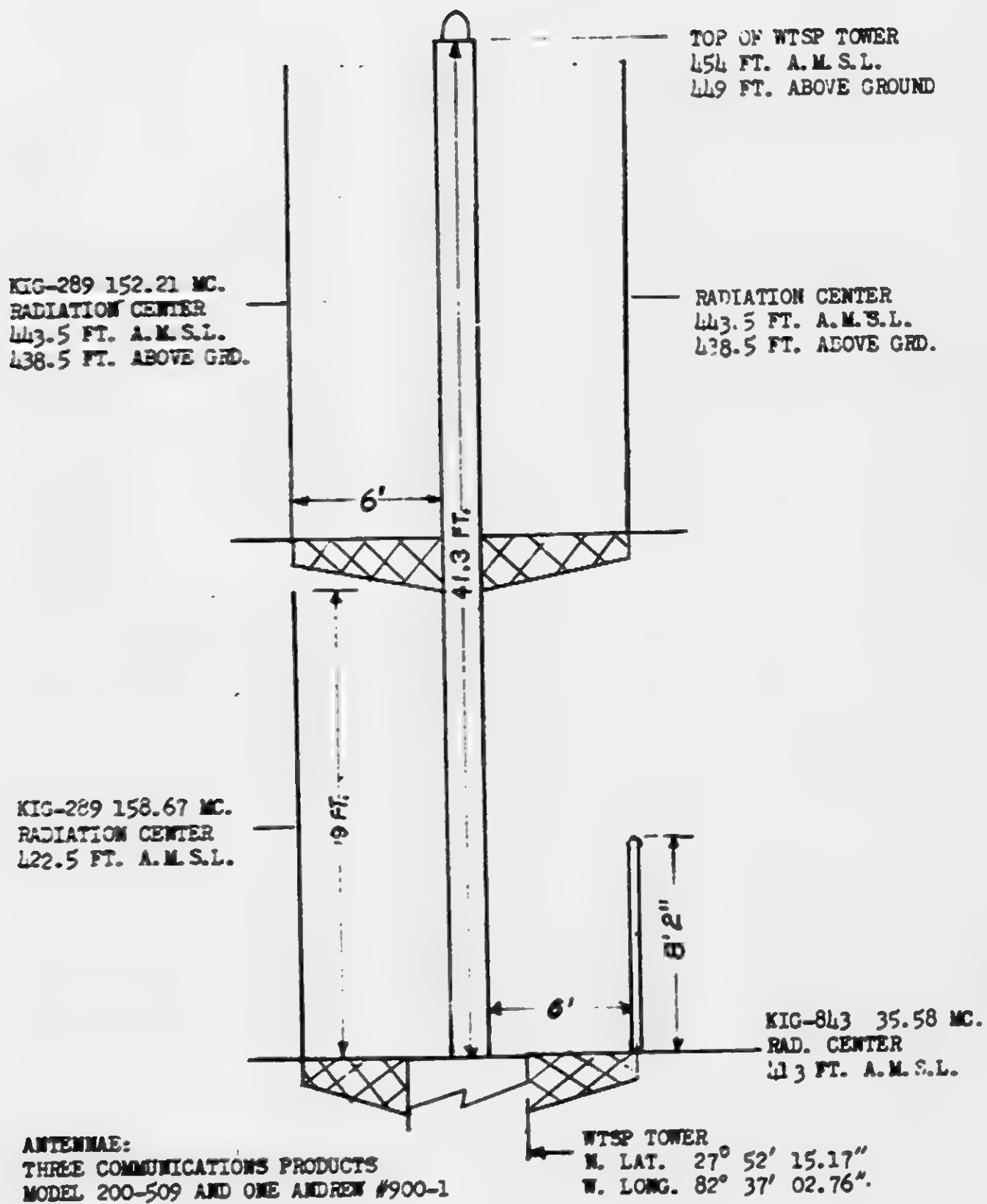


EXHIBIT VII

ANTENNA PLAN

CHARLES P. B. PINSON, INC.

SAINT PETERSBURG, FLORIDA

SEYMOUR KRIEGER
NORMAN E. JORGENSEN

LAW OFFICES
KRIEGER & JORGENSEN
SUITE 514 WYATT BUILDING
777 FOURTEENTH STREET, N. W.
WASHINGTON 5, D. C.

TELEPHONE
EXECUTIVE 3-1635

October 10, 1958

Mary Jane Morris, Secretary
Federal Communications Commission
Washington 25, D. C.

Re: 683-C2-P-59

Dear Miss Morris:

On behalf of Charles P. B. Pinson, Inc. we are filing herewith the following in connection with its application for change in location of Station KIG 289:

Amendment in duplicate dated October 7, 1958.
401-A form in triplicate dated October 7, 1958.

If there are any questions in connection with this application, it is requested that they be referred to the undersigned.

Very truly yours,

KRIEGER & JORGENSEN

By: Seymour Krieger
Seymour Krieger

COMMON CARRIER
BUREAU
OCT 10 1958
REC'D IN
LICENSE BRANCH

Ind. 10-10-58
10-10-58

Auto-Phone Telephone Exchange



DIVISION OF CHARLES P. B. PINSON INC. • 1221 ARLINGTON AVE. N. • ST. PETERSBURG, FLORIDA

ST. PETERSBURG EXCHANGE
CLEARWATER EXCHANGE
TAMPA EXCHANGE

1221 ARLINGTON AVE. N.
3 SO. GREENWOOD AVE.
708 FLORIDA AVENUE

PHONE 5-6181
PHONE 3-5911
PHONE 2-0871

24 HOUR
TELEPHONE
ANSWERING

MOBILE RADIO
TELEPHONE SERVICE

POCKET - PHONE
RADIO PAGING

October 7, 1958

Secretary
Federal Communications Commission
Washington 25, D. C.

COMMON CARRIER
BUREAU
OCT 10 1958
REC'D IN
LICENSE BRANCH

Dear Miss Morris;

KIG 289

We are attaching hereto Exhibit F, amendment to Exhibit B WSP Inc. and Charles P. B. Pinson Inc. contract, for filing. This letter is forwarded in duplicate for filing as a part of the application dated the 19th of September 1958 in which permission to move the facilities of KIG 289 was requested.

We are also attaching as per the request of the Commission's staff form 401A in triplicate for filing with the above application.

If there is any further information which we can furnish please contact us at your earliest convenience. Thank you.

Charles P. B. Pinson Inc.

By *John B. Pinson*
President

Sworn and subscribed to before me this 7th day of October at St. Petersburg, Florida

(SEAL)

Notary Public

Harold G. White

Notary Public, State of Florida at large
My commission expires Mar. 25, 1962
Bonded by Mass. Bonding & Insurance Co.

EXHIBIT F

Amendment to agreement dated the 11th of September 1956 between W T S P
 Ind. party of the first part and Charles P. B. Pinson Inc. party of the second part.

The intent of the amendment is to conform the existing contract with the tariff of Charles P. B. Pinson Inc. and all provisions relating to free service are hereby cancelled. It is further understood that W T S P Inc. may or may not subscribe to service from KIG 289 as may be determined by W T S P Inc.

1. Items number one and two, page three of the above described contract relating to free service are hereby declared void. The service described thereunder shall be rendered under and in conformance with the published tariff of the party of the second part as set forth in item one, page four.
 2. The rental shall be paid in conformance with the schedule as set forth in item three, page five of the agreement.
 3. It is understood that item number three, page five remains in force.
 4. This contract is subject to cancellation upon 30 days notice by the party of the first part in the event that Charles P. B. Pinson is no longer President of Charles P. B. Pinson, Inc.
- In the Presence of:

Executed this 6th day of October, 1958
 at St. Petersburg, Florida

Marshall A. Cline

W T S P Inc.

W. L. Spencer

COMMON CARRIER
 BUREAU

OCT 10 1958

REC'D IN
 LICENSE BRANCH

By W. L. Spencer
 President

Charles P. B. Pinson Inc.

W. L. Spencer
 President

In the Presence of:

W. L. Spencer

FCC Form 41-A
Rev. June 1953

Form Approved
Reg. Bureau No. 12 5000 11

UNITED STATES OF AMERICA
Federal Communications Commission

DESCRIPTION OF PROPOSED ANTENNA STRUCTURE(S)
(Services other than Broadcast)

INSTRUCTIONS

This form, and required exhibits, shall be submitted in triplicate with FCC application forms for radio station authorizations, or shall be submitted independently, in all cases when:

(1) The antenna structure proposed to be erected will exceed an over-all height of 100 feet above ground level, except that where the antenna is mounted on top of an existing man-made structure and does not increase the over-all height of such man-made structure by more than 20 feet, no Form 41-A need be filed; or

(2) The antenna structure proposed to be erected will exceed an over-all height of 100 feet above the established airport "landing area" elevation for each 200 feet of distance, or fraction thereof, from the nearest boundary of such landing area, except that where the antenna does not exceed 20 feet above the ground or if the antenna is mounted on top of an existing man-made structure or natural formation and does not increase the over-all height of such man-made structure or natural formation by more than 20 feet, no Form 41-A need be filed.

* Landing area, as defined in Part II of the Commission's Rules: "Landing area, means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use, for the landing and take-off of aircraft, whether or not facilities are provided for the storage, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo."

5. List all landing areas within 10 miles of antenna site. Give distance and direction to the nearest boundary of each landing area from the antenna site.

Landing Area	Distance	Direction
1. MacDill Air Force Base	7 1/2 Miles	102° Related to N
2. St. Petersburg Airport	8 Miles	182° Related to N
3. Pinellas Airport	4 Miles	312° Related to N
4. Tampa International Airport	11 Miles	37° Related to N

Where antenna site is located within the boundary of a landing area, give distance to nearest runway.

6. a. Geographical coordinates of antenna location

North latitude	West longitude
27° 52' 15.17"	82° 37' 02.75"

b. Submit as Exhibit No. 1, a chart in which is plotted the exact location of the antenna site, and also the relative location of the natural formations and of the existing man-made structures listed in Paragraph 5.

The chart used shall be an Instrument Approach Chart for the landing area to which the antenna is to be erected, or a Sectional Aeronautical Chart, showing the general area surrounding the antenna site to landing area. In general, the Sectional Aeronautical Chart should be used only where the antenna site is more than 10 miles from a landing area or where an Instrument Approach Chart is unavailable. These charts may be purchased from the U. S. Coast and Geodetic Survey, Washington 25, D. C.

c. Exemption - Where the proposed antenna site is within the boundary of a landing area for which an Instrument Approach Chart is available, submit a well-made large scale map showing antenna site, runway, and existing man-made structures listed in Paragraph 5.

7. Will proposed antenna be placed on existing antenna or antenna supporting structure? Yes ☒ No ☐

If the answer is Yes, give call sign and service classification of each radio station presently using this structure.

WTSP - Broadcast

8. a. Type of antenna supporting structure (whether guy, mast, tower, building, etc. or combination thereof).

Tower Guyed

b. State which components, if any, are existing.

All EXCEPT ANTENNAS AND LINES OF KIG 289

c. If a building, water tower, etc., is part of the antenna supporting structure, give height of this structure above ground level at point where antenna will be erected.

449 ft

d. Height of uppermost point of antenna supporting structure above ground level.

448 ft

e. Height of uppermost point of antenna above ground level.

448 ft

9. Submit as Exhibit No. 2, a sketch showing profile view of antenna and its supporting structure(s). Include thereon the dimensions shown in response to Paragraph 8 attached here to VIIA.

10. Elevation of ground at antenna site above mean sea level.

5 ft.

1. Name of applicant (Must agree with name shown on existing authorization or the accompanying application for station authorization).

Charles P. B. Pinson Inc.

2. Mailing address (number, street, city and state).

**1221 Arlington Ave. North
St. Petersburg, Fla.**

3. Purpose of application (Check appropriate box).

a. New antenna construction ☐

b. Alteration of existing antenna structures ☒

c. Change in location ☐

4. If the station with which the antenna structure is to be associated is previously licensed, give call sign.

KIG 239

5. Exact antenna location (street, city and state) (If outside city limits, give distance and direction from, and name of nearest town).

**11450 Gandy Blvd.
St. Petersburg, Fla.**

6. In addition to data required in Paragraph 5, if directive antenna system (using more than one structure) is employed, submit as Exhibit No. 3 a diagram indicating the number of structures, the spacing in feet between such structures, indication of true north, and the approximate directivity of the antenna system.

7. List any natural formations or existing man-made structures (hills, trees, water tanks, towers, etc.) which, in the opinion of the applicant, would tend to shield the antenna from aircraft and thereby minimize the aeronautical hazard of the antenna.

**Existing Construction Licensed and in use by WTSP COMMON CARRIER
TOWER 500' due East of BUREAU**

OCT 10 1958

**REC'D IN
LICENSE BRANCH**

This form and accompanying exhibits are made a part of our application for station authorization dated **September 22, 1958**

Dated this **7th** day of **October**, 19**58**

Charles P. B. Pinson Inc.
Applicant (Must agree with name of applicant in Paragraph 1)

By **Wm. J. Y. Jr.**
Designate by checkmark below appropriate classification

☐ Individual Applicant

☐ Member of Applicant Partnership

☒ Officer of Applicant Corporation or Association

☐ Official of Government Entity Competent under the Jurisdiction to Sign for the Applicant

If this form is submitted independently of application for construction permit or modification of construction permit, the following jurat must be executed

Subscribed and sworn to before me this **7th** day of **Oct.**, 19**58**

Marion G. G. G.
Notary Public

(SEAL)
(Notary Public's seal must be affixed where law of jurisdiction requires, otherwise seal is not required.)

My commission expires **Mar. 25, 1962**
Bonded by **Mass. Bonding & Insurance Co.**

My commission expires

Top of Antenna
44 feet above ground
453 feet above A.M.S.L.

KIG-789 152.21 MC.
RADIATION CENTER
438.5 FT. A.M.S.L.
438.5 FT. ABOVE GND.

Top of WTSP TOWER
154 FT. A.M.S.L.
149 FT. ABOVE GROUND

RADIATION CENTER
438.5 FT. A.M.S.L.
438.5 FT. ABOVE GND.

KIG-789 158.67 MC.
RADIATION CENTER
420.5 FT. A.M.S.L.

Top of Antenna
412 feet above ground
417 FT above AMSL

KIG-843 35.58 MC.
RAD. CENTER
413 FT. A.M.S.L.

ANTENNAE:
THREE COMMUNICATIONS PRODUCTS
MODEL 200-509 AND ONE ANDREW #900-1

WTSP TOWER
N. LAT. $27^{\circ} 52' 15.17''$
W. LONG. $82^{\circ} 37' 02.76''$

5 Feet Above Mean Sea Level
11450 Gandy Blvd
St. Petersburg, Florida

EXHIBIT VII A

ANTENNA PLAN

CHARLES P. B. PINSON, INC.

SAINT PETERSBURG, FLORIDA

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

In re Applications of

CHARLES P. B. PINSON, INC.

For a construction permit to change location and change antenna at existing licensed two-way station KIG289 in the Domestic Public Land Mobile Radio Service at St. Petersburg, Florida.

DOCKET NO. 13579
File No. 683-C2-P-59

For a construction permit to change location and change antenna at existing licensed one-way station KIG 843 in the Domestic Public Land Mobile Radio Service at St. Petersburg, Florida.

DOCKET NO. 13580
File No. 684-C2-P-59

For a construction permit to establish a new one-way signaling facility in the Domestic Public Land Mobile Radio Service at Clearwater, Florida.

DOCKET NO. 13581
File No. 785-C2-P-59

For a modification of construction permit to extend date of required completion of construction and change control point for station KIN652 in the Domestic Public Land Mobile Radio Service at Jacksonville, Florida.

DOCKET NO. 13582
File No. 263-C2-MP-60

**For renewal of the license for station KIB386
in the Domestic Public Land Mobile Radio
Service at Tampa, Florida.**

DOCKET NO. 13583
File No. 207-C2-R-60

**For renewal of the license for station KIG289
in the Domestic Public Land Mobile Radio
Service at St. Petersburg, Florida.**

DOCKET NO. 13584
File No. 1069-C2-R-60

**For renewal of the license for station KIG843
in the Domestic Public Land Mobile Radio
Service at St. Petersburg, Florida.**

DOCKET NO. 13585
File No. 1380-C2-R-60

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 1st day of June, 1960;

The Commission having under consideration the above-entitled applications for authorizations in the Domestic Public Land Mobile Radio Service;

IT APPEARING, That Charles P. B. Pinson, Inc. (Pinson) may have assumed the full operational control of station KIK578, a one-way signaling station at Tampa, Florida, licensed to James C. Fields (Fields), without having first obtained the Commission's consent therefor, as required by Section 310(b) of our Act and Section 21.29(b) of our rules and despite actual notice not to so do; and

[84]

IT FURTHER APPEARING, That the obtaining of the license for station KIK578 in the name of Fields may have been in furtherance of a scheme by Pinson and Fields to mislead the Commission into believing that such facility would be operated by Fields rather than Pinson; and

IT FURTHER APPEARING, That the operation of station KIK578 may not have been in accordance with the sworn statements of Fields and Pinson executed on March 17, 1958, relative thereto; and

IT FURTHER APPEARING, That Pinson and Fields may have willfully and deliberately made false representations to the Commission and its representative for the purpose of misleading or misinforming the Commission relative to matters material to the grant of radio authorizations to such persons and relative to the use and operation of station KIK578; and

IT FURTHER APPEARING, That Pinson may have violated other Federal statutes, particularly those pertaining to income tax and those pertaining to wages and hours of employees; and

IT FURTHER APPEARING, That we are unable to find, at this time, that Pinson possesses the necessary technical and other (character and moral) qualifications to be a licensee in this service; and

IT FURTHER APPEARING, That the Commission has advised the applicant and all known parties in interest by various letters transmitted pursuant to Section 309(b) of the Communications Act of 1934, as amended, as to the reasons why the captioned applications cannot be granted without a hearing and that replies have been received from the

applicant, and from other parties in interest, and that such replies have been considered; and

IT FURTHER APPEARING, That Pinson, in his individual capacity, though not an attorney-at-law, has requested a waiver of Section 1.23(a) of the Commission's rules so as to permit him, individually, to represent the licensee and applicant corporation as attorney; and

IT FURTHER APPEARING, That, pursuant to the provisions of Section 1.23(a) of our rules and well established and sound precedents set forth in our decisions (see 4 FCC 281; 4 FCC 293; 13 RR 1) this request must be denied;

IT IS ORDERED, That, pursuant to Section 309(b) of the Communications Act of 1934, as amended, the captioned applications are designated for hearing in a proceeding which is consolidated, in view of the matters mentioned above, with a hearing ordered this date in the matter of certain applications of James C. Fields and Alan H. Rosenson, File Nos. 1964-C2-R-60 and 2335-C2-MP-60, respectively, at the Commission's offices in Washington, D. C. and at such places in Tampa and St. Petersburg, Florida, as may be designated by the Presiding Examiner, on a date or dates to be hereinafter specified, upon the following issues:

(1) To determine Charles P. B. Pinson, Inc.'s technical and character qualifications to be a licensee in this service.

[85]

(2) To determine whether the statement made to the Commission under oath on March 17, 1958 by Charles P. B. Pinson, President of Charles P. B. Pinson, Inc., relative to the operation of station KIK578 was true and correct when made.

(3) To determine, in the event the statement mentioned in issue 2 above is found to be untrue in any respect, whether such untrue statement was made with intent to mislead and misinform the Commission.

(4) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have made false and misleading representations to the Commission and its representatives relevant and material to the grant of radio authorizations for station KIK578 and material and relevant to the use and operation of such station.

(5) To determine the basis for, and the extent of, the participation of Charles P. B. Pinson, Inc. or Charles P. B. Pinson in the control and operation of station KIK578 and to determine the legal, financial and other relationships heretofore and presently existing between Charles P. B. Pinson, Inc. or Charles P. B. Pinson, on the one hand, and James C. Fields, licensee of record of station KIK578 at Tampa, Florida, on the other hand.

(6) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have violated the provisions of Section 310(b) of the Communications Act and Section 21.19(h) of our rules in relation to station KIK578.

(7) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have been found, by competent authority, to have violated any Federal statute relating to income tax or pertaining to wages and hours of their employees.

(8) To determine, on the basis of the evidence adduced on all of the above issues, whether Charles P. B. Pinson, Inc. should be disqualified for reasons, other than technical qualifications, from being a licensee in this service.

(9) To determine, in the light of the evidence adduced on the foregoing issues, whether the public interest, convenience or necessity would be served by a grant of the captioned applications.

IT IS FURTHER ORDERED, That Pinson's request for waiver of Section 1.23(a) of the Commission's rules IS DENIED; and

IT IS FURTHER ORDERED, That the parties desiring to partici-

pate herein shall file their appearances in accordance with Section 1.140 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Released: June 6, 1960

[Rec'd. Oct. 6, 1960 - F.C.C.] [117]

MAYER U. NEWFIELD
ATTORNEY AT LAW
1119 First National Building
Birmingham 3, Alabama

Fairfax 2-9965

October 5, 1960

AIR MAIL

Mr. Ben F. Waple
Acting Secretary
Federal Communications Commission
Washington 25, D. C.

Re: Charles P. B. Pinson, Inc.
Docket No. 13579-85

Dear Mr. Waple:

I enclose for filing on behalf of the above applicant Motion to Extend Time in triplicate. I am serving copies on the other parties of record. Please inform me if any additional copies are required to be filed.

Very truly yours,

/s/ Mayer U. Newfield

* * *

[Rec'd. - Oct. 6, 1960 - F.C.C.]

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

Re: Applications of
CHARLES P. B. PINSON, INC.

For a construction permit to change
location and change antenna at existing
licensed two-way station KIG289
in the Domestic Public Land Mobile
Radio Service at St. Petersburg, Florida.

DOCKET NO. 13579
File #683-C2-P-59

For a construction permit to change
location and change antenna at existing
licensed one-way station KIG843 in the
Domestic Public Land Mobile Radio
Service at St. Petersburg, Florida.

DOCKET NO. 13580
File #684-C2-P-59

For a construction permit to establish
a new one-way signaling facility in the
Domestic Public Land Mobile Radio
Service at Clearwater, Florida.

DOCKET NO. 13581
File #785-C2-P-59

For a modification of construction per-
mit to extend date of required comple-
tion of construction and change control
point for station KIN652 in the Domestic
Public Land Mobile Radio Service at
Jacksonville, Florida.

DOCKET NO. 13582
File #263-C2-MP-60

For renewal of the license for station
KIB386 in the Domestic Public Land
Mobile Radio Service at Tampa,
Florida.

DOCKET NO. 13583
File #207-C2-R-60

For renewal of the license for station
KIG289 in the Domestic Public Land
Mobile Radio Service at St. Petersburg,
Florida.

DOCKET NO. 13584
File #1069-C2-R-60

For renewal of the license for station
KIG843 in the Domestic Public Land
Mobile Radio Service at St. Petersburg,
Florida.

DOCKET NO. 13585
File #1380-C2-R-60

JAMES C. FIELDS
Tampa, Florida

For a renewal of the license for
Station KIK578 in the Domestic
Public Land Mobile Radio Service at
Tampa, Florida.

DOCKET NO. 13586
File #1964-C2-R-60

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Alan H. Rosenson, d/b as)	DOCKET NO. 13587
ALL-FLORIDA COMMUNICATIONS)	File No. 2335-C2-MP-60
COMPANY Tampa, Florida)	
For a modification of the construction)	
permit for Station KIQ516 in the)	
Domestic Public Land Mobile)	
Radio Service at Tampa, Florida)	

**MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE PLEADINGS**

Comes Charles P. B. Pinson, Inc., applicant in this consolidated proceeding, and respectfully moves that the Commission amend the last paragraph of its Order of September 20, 1960 by enlarging from 15 to 45 days the period of time within which counsel for Charles P. B. Pinson, Inc. may file any pleading which might properly have been filed up to and including the date of the filing of the "notice of appearance" stricken by the Commission in its Order of September 20, 1960, and in support of said motion sets down and assigns, separately and severally, the following:

1. Although the Commission's Memorandum Opinion and Order was dated September 20, it was not released until September 22 and a copy thereof, sent by regular first class mail, was not received by applicant in its office located in St. Petersburg, Florida until the following Monday, September 26.

2. The Commission's September 20 Order reaffirmed its earlier decision not to permit applicant to be represented by Mr. Charles P. B. Pinson, who was not an attorney at law.

3. Applicant has only recently engaged the services of legal counsel to represent it in this proceeding. On October 3, 1960, applicant, as permitted by the Commission's Order of September 20, and acting through said attorney

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sent to the Commission, by air mail, Notice of Appearance in conformity with Section 1.140 of the Commission's Rules.

4. It is impossible, within the period of time specified in said Order, for counsel adequately to review the vast volume of documents relating to the seven applications of this company now pending before the Commission which are involved in this proceeding and to arrive at an informed decision whether or not the client's interests would be best served by filing one or more pleadings permitted by the Commission's Order, for the following reasons:

(a) The fact that counsel is located in Birmingham, Alabama, a distance of some 500 miles from the client's offices in St. Petersburg, Florida, at which applicant is located, itself is a factor which makes it difficult to consult with applicant's employees and officers, and to ascertain basic facts relating to each of said proceedings.

(b) The charges made against applicant are of a most serious nature, involving possible fraud, misrepresentation and, in general, the integrity of applicant and its principal owner and officer, Charles P. B. Pinson, and the failure of applicant and Pinson to answer satisfactorily each of said charges might result in the gravest consequences to applicant, its business and its continued existence.

(c) There are involved in each of the seven proceedings matters of such highly complex and technical nature, all of which raise difficult questions

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of fact, law and procedure, that the time limitation as set forth in the Commission's Order does not afford applicant or its counsel a reasonable opportunity to study the matters involved in this proceeding and reach a mature judgment with reference thereto, essential to the proper handling of such matters.

5. Should the Commission be unwilling to grant a reasonable extension of the period of time in which to file any such pleading, this would constitute a denial of applicant's constitutional rights in that applicant would not have been afforded due process.

6. The undersigned attorney for applicant is authorized to state that Asher H. Ende, attorney for the Common Carrier Bureau of the Commission, and Samuel Miller, attorney for Alan H. Rosenson, d/b as All-Florida Communications Company of Tampa, Florida, will interpose no objection to applicant's request for a 30-day extension of time within which to file any such pleading, should it elect to do so.

Respectfully submitted,
CHARLES P. B. PINSON, INC.

BY: /s/ Mayer U. Newfield

Attorney at Law
1119 First National Building
Birmingham 3, Alabama

October 5, 1960

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[Certificate Of Service]

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O R D E R

95201

FCC 60M-1764

IT IS ORDERED, this 13th day of October 1960, that a prehearing conference, in accordance with Section 1.111 of the Rules, will be held in the above-entitled matter at 10:00 a.m. on Thursday, November 10, 1960, in the offices of the Commission, Washington, D. C.

Forest L. McClenning
Hearing Examiner
Federal Communications Commission
/s/ Ben F. Waple
Acting Secretary

Released: October 14, 1960

FCC 61M-255

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MEMORANDUM OPINION AND ORDER

By Forest L. McClenning, Hearing Examiner:

1. The Hearing Examiner has under consideration the motion for continuance of hearing filed on February 16, 1961 in the above-entitled proceeding on behalf of Charles P. B. Pinson, Inc. and James C. Fields. By this pleading a continuance of the hearing date from February 20, 1961 to March 20, 1961 is sought. By notation attached thereto it is stated that all parties have consented to immediate consideration of the said pleading, but that counsel for Alan H. Rosenson "would like to be heard thereon at anytime on February 16 or 17...."1/ By affidavit attached to the said motion Mr. Pinson avers that because of the confinement of his wife on February 10, 1961 to Mound Park Hospital with the date of discharge therefrom presently being unpredictable, the illness of a minor son requiring continuous care for one week commencing on the date of February 13, 1961, and the fact of his counsel having been unable to come to Florida the "past few weeks" because of representing another client before the Federal Power Commission, he has been unable to spend the time required to properly prepare "the case for hearing and during the hearing." It is also averred that counsel has informed affiant that he should be free to spend "the balance of this week and the week of February 20th with him in order to properly prepare and present our case." Also by affidavit

submitted with said motion counsel for Mr. Pinson avers that as the result of long-distance telephone conversations from Washington, D. C. with Mr. Pinson on the dates of February 13 and 14 he was first apprised of the illnesses of Mr. Pinson's wife and son and became convinced that it would be impossible for affiant as counsel to make adequate final preparations for the hearing due to the emergency burdens placed upon Mr. Pinson as a consequence of these circumstances. Counsel also avers that he is convinced as a result of these conversations that it would be impossible for movants to rely upon Mr. Pinson as a witness, and that without his attendance and ability to concentrate and participate normally in the conduct of the hearing, movants could not fairly or adequately present the relevant facts in support of their cases. Under these circumstances it is asserted that failure to grant this request would compel them to participate in a hearing under circumstances which would constitute a denial to them of due process of law.

2. The basic merit of the pleading here under consideration rests in the contention that movants in the event of denial would be deprived of adequate opportunity to properly prepare for hearing by

^{1/} This statement is not construed as a request for oral argument pursuant to Section 1.45 of the Commission's Rules not having been made directly by counsel for Alan H. Rosenson.

the presently scheduled date. The order of designation herein was released on June 6, 1960 and the proceeding was originally scheduled to commence on September 12, 1960. By Memorandum Opinion and Order released September 22, 1960 movants were, however, afforded opportunity to effect compliance with procedural provisions of the Commission's Rules relative to entering an appearance in the proceeding and were afforded full opportunity to file any pleading which might properly have been filed up to and including the date of the

filing of a notice of appearance which was stricken. On October 5, 1960 present counsel entered an appearance on their behalf. A prehearing conference in which all parties were represented was held on November 16, 1960. At this conference it was agreed, inter alia, that hearing should commence in Tampa, Florida on the date of February 6, 1961. This agreement, among others, was formalized by order released November 18, 1960. Thereafter, the conflict in commitments of counsel referred to by movants in the instant pleading did arise and upon the basis of informal request on their behalf a continuance to the presently scheduled hearing date was granted on January 9, 1961. The basic reason set forth in the order granting this continuance was to preclude the possibility of their having to be represented by other counsel unfamiliar with the proceeding. They were advised by this same order, however, that only exceptional circumstances would be found to permit a further continuance. The matters here set forth do not constitute such circumstances. Movants have had since June 6, 1960 to prepare for the proceedings and since October 5, 1960 to consult and prepare with present counsel. The fact of movants' counsel having to appear before the Federal Power Commission thus requiring his absence from the State of Florida immediately prior to commencement of the instant proceeding was fully known to movants at least prior to the date of January 9, 1961. Accordingly, if any lack of preparation could be attributed to this fact it is of movants own making. Although the illness of members of Mr. Pinson's family is regrettable, by the affidavits submitted herein it is averred that the duration of one is unpredictable and of the other for only a short period expected to terminate before commencement of the hearing. Accordingly, it is not apparent in what manner these matters could cause substantial prejudice. Substantial delay in the instant proceeding has already arisen solely attributable to the present movants. Grant of the instant request could only result in additional delay and disruption to the orderly conduct of the proceeding and to Commission processes.

Further, the request is so untimely that prejudice to the other parties must necessarily result should it be granted.

3. Accordingly, IT IS ORDERED, This 16th day of February, 1961 that the said motion for continuance of the hearing herein from February 20, 1961 to March 20, 1961 IS DENIED.

Forest L. McClenning
Hearing Examiner
Federal Communications Commission
/s/ Ben F. Waple
Acting Secretary

Released: February 16, 1961

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EXHIBIT 7

AUTO-PHONE TELEPHONE EXCHANGE
OPERATED BY

CHARLES P. B. PINSON INC.

ST. PETERSBURG, FLORIDA

1221 -Arlington Ave. North

October 20th 1956

Mr. Ed Moss, Mgr.

Otis Elevator Company

1307 Florida Avenue

Tampa, Fla.

Dear Mr. Moss:

I am very sorry that I was not able to contact you yesterday in regard to the installation of service to you in Tampa, Florida. Pocket Phone Service will be available in the City of Tampa on or about January 15th 1957. We can provide you with Answering Service in the city of Tampa by using one of our Tampa numbers, that is done by providing

If No Answer listing in the phone book so that if your Office phone does not answer the people will dial the other number which is Tampa 2-0871, our operators then answer this line, take the message, handle and dispatch your calls as per the St. Petersburg operation. We can provide this service immediately and will be able to provide you with Pocket Phone Service about the 15th of January, so that your Tampa Office operation will be then identical with your St. Petersburg one.

If you will call our office and tell me what time it is convenient for you I will be very glad to meet with you either in St. Petersburg or in Tampa at your convenience, to discuss the various arrangements and go over the operation of the system with you. If there is any further information which I can supply or aid which I can give you, please feel free to contact me at any time. The Otis Elevator Account is one of our most valued accounts and I wish to assure you that we will do all within our power to give the best of communication service to you and if you or any of your people desire any change in our mode of operation please contact us. We want you to feel that this service is operated for your benefit, operated in the manner that you want it operated and the calls are handled essentially as you instruct. I am looking forward to hearing from you and working with you.

Very truly yours,

/s/ Charles P. B. Pinson,

President

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EXHIBIT 14

July 7, 1960

Charles P. B. Pinson, Inc.
1221 Arlington Avenue, N.
St. Petersburg, Florida

Attention: Mr. Charles P. B. Pinson

Gentlemen:

The Commission has considered carefully all the matters raised in your letters of April 29 and June 20, 1960 insofar as they pertain to Messrs. Alan H. Rosenson and Arthur A. Gladstone.

As you are aware, an application of Mr. Rosenson for certain radio license authority from this Commission has been set for hearing in a consolidated proceeding with a similar application from Mr. Fields, in Docket Nos. 13586 and 13587. It appears to us that the proper forum for the examination of allegations with respect to Mr. Rosenson, insofar as they may be relevant or material, is the hearing on the aforementioned docketed cases, particularly in relation to issues (k) through (r), inclusive. We wish to advise you that we are not, at this point, ruling that any particular matter or allegation raised in the aforementioned letters is necessarily material or relevant. The Presiding Officer will rule on the relevance and materiality of any matters properly presented at the hearing.

The allegations which you have made with respect to Mr. Gladstone are of a different nature. We note, first, that they are not related in any way to the merits of the proceedings before us involving Charles P. B. Pinson, Inc. or James C. Fields. They are, instead, a direct attack on the honesty, integrity and reliability of the Commission's employee. The Commission is, of course, concerned with such matters and is disposed to give its prompt and careful attention to any specific evidence bearing upon such a matter. On the other hand, the Commission cannot undertake to proceed on the basis of vague allegations and insinuations unsupported by facts. Upon review of your letters, we find four (4) specific allegations, as well as numerous innuendoes and insinuations with respect to Mr. Gladstone's activities. Two of the allegations relate to the grant of Mr. Rosenson's application and intimate that action was taken on an application which was incomplete and improper in the particular respects noted by you. Our review of the situation shows that neither of these charges is in accord with

the facts. The information on the application which you alleged was lacking in one item (No. 23) was, in fact, set forth in another

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item (No. 12). Moreover, even had the matter referred to not been clarified, the alleged defect would have been inconsequential. The engineering which you alleged was improper is, in fact, proper for a base station and, in this connection, your attention is invited to Section 21.110(b) of the Commission's rules.

The other two specific allegations relate to alleged improper activities in viewing your records and alleged improper or unseemly demands for food and drink. Here, again, we find that your allegations are not in accord with the facts. In your letter you claim that Mr. Gladstone "unlawfully" reviewed your records because all your staff was at lunch at the time when the review was made. This is contradicted by another statement, in the same letter, that you have personnel on duty at your premises 24 hours a day. Furthermore, our files indicate that the review made by Mr. Gladstone was, in fact, made at all times in the presence of your employees and with their active cooperation. This is evidenced by the fact that material copied from your files was certified by one of your employees as true and correct. We find your allegations, with respect to food and bar bills, to be not only contrary to the facts, but scandalous and scurrilous. The information available to us indicates that Mr. Gladstone was in a restaurant with you only on two occasions. At the first of these times, it appears that, instead of being entertained by you, Mr. Gladstone, in fact, paid your bill and that you boasted of this to other persons. The second time, it is definitely clear that the meal involved a luncheon at a local restaurant, at which time no alcoholic beverages were served, and that each of the persons participating, namely, yourself, Mr. Gladstone and Mr. Palik each paid for his own meal.

Insofar as all other matters which are set forth in your letters are concerned, they are replete with unsupported innuendoes and

vague insinuations which must be reviewed in the light of the surrounding circumstances. These circumstances are as follows:

(a) Your allegations are made against members of our staff who conducted an investigation which has resulted in a formal proceeding designed to determine whether the Commission should, in fact, renew your licenses.

(b) Although the alleged inproprieties took place more than 14 months ago, you did not advise the Commission of them until numerous 309(b) letters had been sent you, indicating the nature and extent of the questions raised by your conduct, despite the fact that, during the intervening period, you and Mr. Fields visited the Commission. This visit took place in April 1959, immediately following the investigation, and in the course of this visit, you had an audience with five (5) of the seven (7) Commissioners.

(c) Mr. Gladstone, and other members of his staff, to whom you refer, are long time employees of this Commission in whose integrity and honesty we have complete confidence.

(d) There are other significant and patently self-contradictory representations contained in the various documents you

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have filed with us and in the personal representations you have made to us orally.

In view of the foregoing, we advise you that we reject the unsupported allegations, insinuations and charges made by you with respect to Mr. Gladstone and other unnamed members of the Commission's staff, and we are striking from our files your letters of April 29 and June 20, 1960, insofar as they contain such allegations, insinuations and charges.

BY DIRECTION OF THE COMMISSION

Ben F. Waple
Acting Secretary

[Rec'd July 19, 1961 [F.C.C.]

MAYER U. NEWFIELD
Attorney at Law
1119 First National Building
Birmingham 3, Alabama
* * *

July 18, 1961

AIR MAIL
REGISTERED - Return
Receipt Requested

Mr. Ben F. Waple, Acting Secretary
Federal Communications Commission
Washington 25, D. C.

Re: Charles P. B. Pinson, Inc. et al.
Docket No. 13579-85 and Docket No. 13587

Dear Sir:

In connection with the above matter, I enclose original (manually signed) and 13 conformed copies of Proposed Findings of Fact and Conclusions of Law. I have mailed copies to Examiner McClenning as well as to counsel for the other parties.

Very truly yours,

/s/ Mayer U. Newfield

Enclosures

[Rec'd July 19, 1961 -F.C.C.]

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

As submitted by Charles P. B. Pinson, Inc.
and
James C. Fields

Mayer U. Newfield
1119 First National
Birmingham 3, Alabama

Attorney for:
Charles P. B. Pinson, Inc.
and James C. Fields

Charles P. B. Pinson, Inc. and James C. Fields hereby submit the Proposed Findings of Fact as follows:

1. Objection was made to the proposal of Alan H. Rosenson to represent himself after having retained counsel, namely, Mr. Samuel Miller (R. 54). Said objection was overruled (R. 56). Objection was also made to the announced reservation by Mr. Rosenson to reserve the right to summon counsel later in the proceeding if he desired to do so (R. 56).

2. Counsel for Charles P. B. Pinson, Inc. and James C. Fields at the outset of the Hearing in Tampa, Florida on February 20, 1961 requested that the Trial Examiner reconsider the Motion for Continuance of the Hearing which was originally filed on February 16 and which was overruled on the same date. Counsel urged as further and additional new grounds for the Motion for Continuance that he had been in almost continuous preparation and consultation with his clients since his arrival in St. Petersburg on Thursday evening, February 17 (R. 58, 59). This request was denied (R. 60) and the presiding Examiner refused to hear further facts which counsel wished to present in support of his Motion (R. 61).

3. On Friday, February 17 counsel for Charles P. B. Pinson, Inc. (hereinafter sometimes referred to as "Pinson"), telephoned Mr. Lawrence

M. DeVore, attorney for the Federal Communications Commission and asked him if he would, in the interest of speeding up the procedure, furnish a list of the

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persons he had subpoenaed (R. 63, 64), and further if he would give further specifications and particular issues Pinson and Fields would be required to meet (R. 65), whereupon Mr. DeVore informed him that the Commission's Staff did not have any evidence to present in the proceeding relevant to a showing that Charles P. B. Pinson personally or Charles P. B. Pinson, Inc. has violated any federal statute relevant to income tax, as set forth in the Commission's order dated June 1, 1960, Release No. 88810 at paragraph (7) (R. 66). A stipulation to that effect was stated of record and accepted (R. 67, 68).

4. Counsel for Pinson and Fields again requested the Examiner to hear further detailed specific reasons which, in his opinion, warranted and impelled granting of a Motion for Continuance. The Examiner declined to hear any further argument (R. 68).

5. Counsel for Pinson and Fields, in support of his Motion at the outset of the Tampa Hearing for a continuance was finally permitted to state for the record that he had been in almost constant preparation for the Hearing since 10 P.M. Thursday evening, February 16, 1961, that he and the clients had worked from approximately 9 A.M. until late at night with only a short recess of 15 to 30 minutes for lunch late in the afternoon, and working until 8 or 9 P.M. in the evening before partaking of the evening meal in order to devote every possible moment to the preparation for the

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Hearing; that a son of Mr. Pinson was ill with scarlet fever but was unable to be at home because the boy's mother, Mr. Pinson's wife, was then confined to the hospital and that the child who was only four years old was emotionally upset and that the boy who was at the offices of the Pinson

company kept interfering with the father and his counsel and other employees; and that Mr. Fields, the boy's grandfather, finally was compelled to remove the child forcibly from the offices; and that this situation continued during Friday, Saturday and Sunday until late in the evening each night and made it exceedingly difficult for the proper preparation of the Hearing which commenced in Tampa, Florida at 10 A.M. the following Monday (R. 75).

6. The presiding Examiner refused to hear further argument (R. 76) and also denied counsel's motion for immediate adjournment for the purpose of making an appeal direct to the Commission (R. 76).

7. Counsel for Pinson and Fields objected to entry of the appearance of Mr. Arthur A. Gladstone as counsel for the Commission (R. 86, 87).

8. Arthur A. Gladstone, Chief of the Domestic Radio Facilities Division of the Common Carrier Bureau of the Commission on or about January 15 called upon the United States Marshall in Tampa, Florida to serve subpoenas on witnesses (R. 91). Counsel representing Pinson and Fields was not served with a copy of such request (R. 92). Copies of such request were available in the courtroom (R. 92). Counsel's request to examine said requests which were

prepared by the witness (R. 92), which request was made for the purpose of enabling said counsel to determine whether or not, in his opinion, the requests for subpoenas were supported by a proper showing of general relevance and materiality of the evidence sought in compliance with Section 1.132 of the Rules of Practice (R. 93), was denied (R. 94, 95). Counsel for Pinson and Fields stated (R. 95) that if in his evaluation and determination the Commission's rules had not been followed with respect to the issuance of the subpoenas, a motion to quash would be made (R. 95). One of the subpoenas was served on James C. Fields, Respondent (R. 96).

9. On Sunday February 12, 1961 (R. 1127, 1129) Arthur A. Gladstone went to the home of Charles J. Magee, auditor for Charles P. B.

Pinson, Inc., and interrogated him to determine whether Magee had done certain auditing work in connection with financial statements submitted to the Commission by Charles P. B. Pinson (R. 99, 100, 102). Gladstone admitted requesting Magee not to communicate to Pinson "the fact that . . . we intended to subpoena him . . ." (R. 103). Gladstone stated he had no recollection that he had also asked Magee not to reveal to his client the substance of Gladstone's discussion with Magee (R. 104). Magee testified as follows (R. 1129):

A. Well, Mr. Gladstone as he went out to leave asked me not to tell or reveal or words to that effect to Mr. Pinson that he had come to see me and I told him under accounting ethics and being an accountant I felt obliged to tell Mr. Pinson that he had been there and he then asked

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me not to reveal the nature of the conversation.

Mr. Gladstone conceded that Mr. Magee had made such a statement (R. 108).

10. During the course of Mr. Gladstone's interview with Mr. Magee (R. 1131), at which time no subpoena had been served on Mr. Magee (R. 1132), Mr. Gladstone handed him a document containing the following (R. 1132, 3):

"The undersigned acknowledges due service of a subpoena requiring attendance at 10:00 A.M. in Room 403, United States Post Office Building, Tampa, Florida, on February 20, 1961, to testify at a hearing before the Federal Communications Commission in the matter of Charles P. B. Pinson, Inc., et al, Docket Nos. 13579, et al.

and Mr. Magee was thereupon induced to sign such paper (R. 1131) and did so under the impression that he might or might not be served with a subpoena (R. 1132).

11. In the absence of any exchange by Mr. Fields of technical

engineering data on Station KIK 578 in Docket No. 13586, counsel announced that reliance would be made on the engineering data relating to said station as previously filed with the Commission (R. 117), counsel stating that the failure to exchange new data, as referred to in the Examiner's pre-hearing order, resulted from his unfamiliarity with Commission practice (R. 123) (this being his first appearance in any proceeding before the Commission (R. 127), his clients' decision that the cost was excessive (R. 118), and that reliance on the data previously filed was permissible (R. 125).

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12. There is no issue as to the service performance of any station licensed by Charles P. B. Pinson, Inc. (R. 131).

13. Numerous witnesses testified that the service furnished by the Fields Tampa Pocket Paging Station and the Pinson St. Petersburg Station KIG 289 was excellent and most beneficial. Among these are the following:

(a) Dr. William A. Moore, an orthopedic surgeon who had subscribed for a period of more than two years, stated that he found the service to be ". . . extremely helpful and very time-saving and beneficial to my patients, many of whom are emergency patients; especially getting quick calls to the hospital emergency room or occasionally, a home, in my automobile." (R. 133). Dr. Moore testified that having such service available saved from 30 minutes to an hour at least in receiving calls (R. 134). Dr. Moore further testified that the service was available within a range of 10 miles and that he had experienced no difficulty at all in receiving the signal (R. 135). Dr. Moore, in response to a question as to the efficiency of the operators in handling calls stated:

A. The best of any switchboard I have ever heard, and I have heard a few, in the army, Walter Reed, schools, hospitals and so forth.

The physician further stated that any alternative service as might be furnished by the telephone company would be substantially more costly,

and that the operators were very helpful in taking the messages and holding them while he was tied up in surgery (R. 136). Dr. Moore testified that he

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subscribed to the service after learning about it from a friend of his (R. 138). Dr. Moore further testified that he subscribed to the telephone answering service for his office provided by Charles P. B. Pinson, Inc. but clearly understood that it was different from the service furnished by Fields. Dr. Moore further testified that he has heard of a beep-type of selective radio paging but that "It would not be of any great advantage to me, in fact, it would be a disadvantage if I was in church or a theatre or someplace quiet. Having a beep, you wouldn't want it" (R. 142). This witness further indicated that he was completely aware of the difference between the service furnished by the telephone answering service furnished by the Pinson company and the pocket paging service furnished by Fields and that he made separate checks in payment therefor. (R. 133).

(b) Don Starr, a newsman for WFLA-TV, St. Petersburg News Bureau, testified that his Bureau utilized the auto phone service of Charles P. B. Pinson, Inc. in St. Petersburg and found it to be prompt, courteous, dependable and reliable (R. 149) and stated at R. 151:

A. Well, I can only speak --- Well, for the entire media, since we all participate in this service and we have a news arrangement with them in St. Petersburg and Clearwater, in that we have a police-participation set-up. In other words, when an event occurs of news interest concerning the police, this service eliminates the job of calling each of the media in turn, the newspapers and the rest, and therefore this way he does not have to call but one number. The operator calls him in the car or wherever he happens to be, and in that way we

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have gotten calls from the scene of an accident or fire within three minutes. In fact, it is an indispensable service.

(c) Bill Mitchell, with the Pinellas County News Bureau of WLYC, St. Petersburg stated that the Auto-Phone service his Bureau received "... could be no better. Certainly we would hate to lose it" (R. 154), and continued at R. 155:

A. Well, when something happens in the police department they call direct the answering service instead of calling all the police reporters individually. They make one call to the answering service, and then, in turn, the answering service gives it to all of the police reporters in cars or at home, whichever is the case. There is a terrific time-saving involved. It is an excellent service which we would hate to lose; very valuable to us.

Q. Do you find it accurate and dependable?

A. Yes, I do. It has always been very accurate.

Q. What about the time lag itself in the messages?

A. Well, it is never more than two or three minutes' time lag, if at all.

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Other testimony was given indicating that the Pocket Paging Service furnished by the James C. Fields Station was satisfactory (R. 160) by David Dious, engaged in operating cigarette vending machines, and by Squire Brock, the operator of coin-operated machines playing musical records (R. 184), Mr. Brock stating that:

Well, all I can say is that it has always given mighty good service; I should say excellent service.

The witness further testified that the station operators transmit messages accurately and without delay.

(d) Testimony as to the service rendered by the Pinson two-way

signalling station in St. Petersburg, Station KIG289, was given by an electrical contractor, John Gabrio (R. 248), by Burton Lemberg (R. 253), and by a general contractor, William H. Schnorr, who characterized the service as "excellent".

Two operators testified that they were instructed to communicate with customers of the Fields and Pinson Pocket Paging Stations and that names were taken in order without any selectivity whatever (R. 232, 291), that approximately 80 customers were contacted and that not a single customer refused to testify or give statements on behalf of said Stations (R. 235). None of these witnesses was subpoenaed, all appearing voluntarily and without any compensation.

14. Testimony was also given about the excellent service provided by the Pinson ship-shore station in St. Petersburg. Dean Braun testified that the Benton Company, which was engaged in dredging operations in Tampa Bay and which operated a dredge and several tugs, found this service very

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useful (R. 169, 170). He referred to an occasion when a tug sank and gave a distress signal which enabled the Company to notify the Coast Guard, with the result that a helicopter safely took off the two-man crew (R. 171, 174).

15. John W. Staly, service engineer in charge of the Pinson stations, testified that he had a first class radio-telephone license from the Federal Communications Commission, had never been suspended and had 14 years' experience (R. 261-3); was available on a 24-hour basis for maintenance work at said stations (R. 270), living next door to the principal office of the Pinson Company in St. Petersburg; such maintenance work and service covering not only the station equipment itself, but mobile equipment furnished to customers. The witness further testified that he was instructed to follow the Commission's rules and regulations "to the letter at all times" (R. 270). The witness further gave some specific instances wherein emergency or night service was given to customers,

e.g., on one occasion at 2:00 A.M. mobile communications equipment for a night patrol service; a service failure for a WFLA newsman was remedied promptly at 9:00 P.M. (R. 272); he went out on several occasions on a boat to service equipment for the Benton Company (R. 273). Generally, this witness testified that a number of failures was only normal. Mr. Staly further testified that he made periodic inspection of the base station equipment (R. 274), that the log books were

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properly maintained (R. 275) and that the corporation kept a daily record of the number of calls handled through the stations for each mobile unit, that each operator used a time stamp which automatically noted the time each message was received, and that generally there was a time lag of only 30 seconds to one minute between the receipt of telephone messages and the dispatch of such messages on the air (R. 279). The witness further testified that all of the auto phone equipment complied with FCC specifications and that a sufficient supply of mobile units was kept in inventory (R. 280).

16. John W. Staly also testified concerning difficulties encountered in maintaining service for Stations KIG289 and KIG 843 which had radiating antennae located on top of the Florida National Bank Building in St. Petersburg (R. 300-304). The witness testified that he had difficulty in gaining access to the antennas (R. 302, 3), that elevator service was quite poor to the roof of the building (R. 305). The witness testified that because of the obstructive, uncooperative tactics of the building personnel, repairs on one occasion were delayed one day, thereby resulting in the station being off the air for a total of two days (R. 346, 348).

17. The chief engineer for the Pinson stations testified that there were a number of instances where the transmitting equipment for Stations KIG389 and KIG843 was sabotaged (R. 308, 9). He indicated that unknown parties had inserted wrong value components in the exciter unit which

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created an overload and that improper fuses had also been placed therein to prevent blowing of the overload, thereby resulting in the burning of said parts and the disruption of service (R. 308, 9). The witness testified that:

A. It appeared as if someone had went in, changed the fuses to a heavy rating and capped in a very low ohmage resistor across the power supply so that when the operator stepped on the remote control or triggered the remote control, the transmitter would burn.

Mr. Staly further testified that there were occasions when unknown parties had tampered with fuses resulting in disruption of service (R. 348, 9).

18. Charles P. B. Pinson, Inc. devoted a substantial amount of time to research in an effort to improve equipment and service for customers (R. 288). Included were the development and installation of new types of automatic line-balancing equipment and an automatic busy signal. John W. Staly testified (R. 282) that such equipment was designed to maintain voice levels at a constant level in the interest of maintaining clarity and quality of reception. The automatic device developed by the Pinson Company closes off re-transmitting equipment: as one mobile unit is talking to the base station, users of receivers and other cars hear a busy signal, thereby intending to promote privacy, although other mobile units could hear at least one side of the conversation if they wished (R. 299).

19. The general character and reputation of Charles P. B. Pinson, Inc. and of Charles P. B.

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Pinson, individually and of James C. Fields, individually in the communities in which they are located was established by numerous witnesses as being good, as were their reputations for truth, honesty, and veracity. Character witnesses for Pinson testified at R. 147, 174, 221, 222 and 224. Testimony on behalf of Fields was given at pages 377, 378, 381 and 382.

(a) Favorable character witnesses for Pinson included Don Starr, a newsreporter for Station WFLA-TV, St. Petersburg, who stated (R. 147, 8, 9) that "to the best of my knowledge, Mr. Pinson enjoys an outstanding reputation in the community."

(b) Dr. Paul R. Hortin, Senior Minister of Christ Methodist Church in St. Petersburg (R. 218), the largest protestant church in that city and the second largest methodist church in Florida. Dr. Hortin testified that he came to know Mr. Pinson personally when one of Mr. Pinson's employees was asphyxiated and Dr. Hortin officiated at her funeral, following which free telephone answering service was furnished the church by Pinson. Mr. Pinson was not a member of Dr. Hortin's church.

(c) John M. DeChant, Jr., an insurance underwriter, testified that Pinson had a good general reputation in the community (R. 224).

(d) John Gabrio, an electrical contractor in St. Petersburg, testified that Pinson: "... is considered a reputable citizen, and I am sure throughout the city there is no one I have ever talked to

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that has said anything to the contrary." Mr. Gabrio also gave favorable testimony with reference to the reputation of the Pinson Company and Mr. Pinson's reputation, for truth and honesty (R. 251 and 252).

(e) Burton Lemberg testified (R. 254) that Pinson's reputation for truth and veracity was good. Mr. Lember is a general contractor.

(f) William H. Schnorr, engaged in the general contracting business, also gave favorable testimony about both Mr. Pinson and the Pinson Company (R. 257, 8).

(g) Even Glenn L. Velboom, Jr., who was called by the Staff to give adverse testimony concerning Mr. Pinson's reputation, admitted that Pinson was honest (R. 1205) and paid his obligations to the Bank, and that he had no knowledge of Mr. Pinson's general reputation for truthfulness (R. 1206). This witness also testified that he and Mr. Pinson had had an altercation (R. 1208). Mr. Velboom was president of the

Florida National Bank in St. Petersburg and conceded that the only serious complaint about the presence in the building from time to time of Mr. Pinson and employees of the Pinson Company was received from a tenant who operated a telephone answering service (in competition with the Pinson Company) (R. 1211).

(h) Lawton Swann, Jr. appeared voluntarily (as did all witnesses for Pinson and Fields) and testified favorably as to the character of Mr. Pinson. He testified at pages 470 and 471 as follows:

A. Well, when he was past the primary which he won by a considerable majority, and running on the Democratic ticket in

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a predominantly Republican county, some information came to me that I felt I should discuss with him. I was his campaign treasurer. And it wasn't information which you would normally desire to use in a clean campaign, but it could have swung the election to his favor. I discussed it with him and he flatly refused to use it.

Q. Was there any question as to the accuracy of the information in your opinion?

A. No, sir.

Q. It did involve or might reflect upon his opponent, the Republican candidate?

A. It could have, yes, sir.

Q. In your judgment, it might have had a decisive effect on the election?

A. It my opinion it would have, yes.

Q. Mr. Pinson declined to use it?

A. Absolutely.

Mr. Swann continued that Pinson's reputation was very good, that he knew nothing derogatory concerning him and that his reputation for truth and veracity was excellent and that: "his word is just as good as his bond."

Mr. Swann, who is in the general insurance and life insurance business, referred to one incident which to his knowledge was unique in

20 years in the insurance business, stating that Pinson:

"... is the only man or woman that I have ever known to fuss at an insurance adjustor for trying to pay him too much money. He had a minor fire in the kitchen of his home, more smoke damage than fire damage, and the adjustor had three estimates, and Mr. Pinson felt they were out of line. He formerly built some houses and knows construction. So he refused to accept the lowest of the estimates, which were higher than he thought he should receive. . . . So he himself went out and secured another contractor, had the job done and saved the company some \$75 in round figures as I remember."

(i) The Mayor of St. Petersburg, Edward F. Brantley, testified (R. 1893) that he had been personally acquainted with Charles P. B. Pinson for

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several years and had known of him by reputation for several years prior to that time, that Mr. Pinson had a good reputation generally and for truth and veracity and honesty and that: "I know nothing, absolutely, derogatory about Mr. Pinson."

(j) Gerald A. Wood (R. 376), a retired Canadian citizen who lives five or six months of the year in St. Petersburg, testified that he had known James C. Fields for only eight years, that his general reputation in the St. Petersburg area is good, that he knows nothing derogatory concerning him and that his reputation for truth and veracity in the community is good.

(k) Orley DeGraw, prior to his retirement a Vice President and member of the board of Western Clock Company, a subsidiary of General Time Corporation, testified favorably as to the reputation of James C. Fields in the St. Petersburg community and knew nothing derogatory concerning him. (R. 378).

(l) Admiral George E. Porter (ret.), of the U. S. Navy, testified that he had been intimately acquainted with James C. Fields for the past

seven years, and when asked about his general reputation in the St. Petersburg community, stated: "I can say without qualification, Mr. Fields is an outstanding citizen of St. Petersburg." Admiral Porter further testified that his reputation "is way above average" and that he knew absolutely nothing derogatory concerning him and that his reputation for truth and veracity was "excellent in every respect."

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20. Fields entered the Navy in 1909 and at the end of the first cruise was paid off as a Quartermaster 2nd class. He reinlisted after four years and attended radio school in Brooklyn, New York, becoming a radio electrician. He served continuously until 1929. During World War I he was a Warrant Officer and reverted back to Chief Radio Man in 1922. Fields joined Radio Corporation of America as a field engineer and served continually with that company until January, 1943 when he went back on active duty with the Navy as Chief Radio Electrician and was immediately appointed Chief Warrant Officer. Fields was an instructor for Officers Training School and served 27 months in the South Pacific, returning to the states in 1945 when he retired from the Navy and went back to work with Radio Corporation of America (R. 936).

21. Fields obtained a special first class commercial license in 1912 or 1913 (R. 939). Fields was with RCA Photo-Phone Division which involved installing and servicing theatre sound equipment. In 1931 Fields was technical inspector for RCA Photo-Phone (R. 942). He later became district manager for the service department in Baltimore covering seven states. In 1938 Fields was given the position of Senior Sales Engineer for Florida and Georgia, moved to Florida in 1952 and requested retirement April 1, 1954. Since that time Fields has acted as RCA's representative for Florida Power Company doing consultative and sales work.

22. Fields became acquainted with Pinson through Fields' daughter, Nancy, around 1954 (R. 943). His daughter has two children. When asked about his

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business relationship with Charles P. B. Pinson, Fields replied:

"I don't remember any business relations, but he is a hell of a good fisherman and a lousy golfer and I have always liked Charles" (R. 944). Have you enjoyed a close and warm and satisfactory family relationship? Yes; I might say exceptionally so. I have had every confidence in Charles, and we have never had any argument or disagreements that amounted to anything at all, no. Do you have any question about his honesty? (R. 945). Never."

Fields has invested a total of approximately \$1,000 out-of-pocket in the Tampa station; (this does not take into account receipts from billings) (R. 945).

23. Official notice was taken of Exhibit "A" in File KIK 578 showing a breakdown of assets of James C. Fields and a net worth of \$69,000, received by the Commission on January 28, 1957 and filed in support of Fields application, dated October 3, 1956 (R. 950).

24. Official notice was taken of engineering reports received by the Commission on June 17, 1957 and dated June 12, 1957 signed by Edward W. Deeters (R. 953). In October 1955 the FCC dismissed the Pinson company's application for a Tampa license.

26. Fields had an extensive background in one and two-way signaling. In 1947 or 1948 he considered going into the two-way signaling business in the District of Columbia, having been offered an installation with no rent in a hospital and other factors which would tend to minimize expense. However, he considered it to be too costly (R. 954). Charles Pinson went into the auto-phone business in St. Petersburg against Fields' recommendation (R. 954).

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27. Fields described his decision to apply for the Tampa license as follows:

"I thought, 'Maybe I have been missing a bet here.' I always knew that if two-way signaling was combined with telephone

answering and properly organized it would be a good investment. When Mr. Pinson was undertaking to expand this business of two-way communication, telephone answering service and paging, and when he was advised that license for a paging system in both cities would not be approved without considerable to-do, he withdrew one application for Tampa.

And we discussed this. He had discussed this with me casually without, of course, asking my opinion or anything on it. Later on when I say -- well, I thought, "Maybe there is something to this, and I will have to try again" -- and I asked his opinion on if I invested a few nickels for a paging system in Tampa if he thought it would be a good thing. I asked him at that time whether he had any objection if I would go ahead on this thing. Well, he laughed and said, of course not, and so I thought it over and didn't do anything about it. This was during the first part of 1955, 1956 -- '56, I believe.

Then, later on, I decided that I would make an application for it, but I'm still not sold on it 100 per cent". So in October of 1956 I did make out the application for the license. And as a matter of fact he assisted me in making out all the papers on the license application" (R. 955-6).

28. Fields had no office. There was nothing unusual about his going into Pinson's offices in St. Petersburg from time to time and the two men frequently met and had lunch together during business hours (R. 957). The Fields' transmittal letter dated January 25, 1957 was transmitted with Fields' knowledge and consent even though the signature was not that of Fields. The letter was prepared at his instructions (R. 959).

29. Fields was furnished periodic settlement sheets showing application of customer money received toward payment of the transmitter purchased under conditional sales contract and toward the cost of the

receivers (R. 959). Fields reflected as income and paid taxes on revenue from customers (R. 960).

30. Fields testified that the statements in his letter-affidavit to the Commission, which was dated March 17, 1958, to the best of his knowledge, information and belief were true and correct (R. 961). Fields stated: "This letter is correct and was signed after due deliberation. This letter is a combination of Mr. Pinson and myself . . . It was typed in the St. Petersburg office" of Pinson (R. 961). Fields was present "during the consultations and read the letter carefully" (R. 962).

31. Fields identified the November 4, 1957 contract as the first written contract with the Pinson company governing operation of the Fields station. At that time the license had not been granted (R. 964).

32. Fields testified that on March 10, upon receipt of the FCC telegram which was read to him on the telephone from Western Union and which directed him to take Station KIK 578 off the air, he immediately telephoned the St. Petersburg office of the Pinson company, then got in touch with the operator at the paging station control point in Tampa by means of the leased line and told the girl that he had received a wire from the FCC and to discontinue the paging system immediately (R. 964).

33. Fields did not accompany Pinson to Washington to attempt to settle the matter and restore service for two reasons: because of the additional expense and because Fields was ill and was not physically capable of going (R. 966). Moreover, he had never talked to and was not personally acquainted with any member of the Commission's staff in the Common Carrier Division as was Pinson.

34. Fields had no intent to deceive the Commission on any point at any time. To the best of Fields knowledge, information and belief, all the facts and figures contained in the document filed with the FCC were true and accurate and in executing the conditional sales contract and in issuing the check dated March 3, 1958, Fields had no purpose or intent to mislead or deceive anyone (R. 968).

35. Fields' statement that he personally telephoned the operator at his Tampa station, informed her of the FCC telegram and ordered her to take the station off the air immediately, is completely corroborated by the operator who was on duty, Tinia Nora Douglas. She was on duty on March 10, 1958 and identified the log entry in Station KIK 578 log book, Sheet No. 1 of Pinson Exhibit No. 2, as having been made by her, as follows:

"Tinia Nora Douglas, Station removed from Air March 10, 1958 at 7:54 P.M. in response to telegraphic order from FCC." (R. 1814).

She testified:

"Mr. Fields called me on the telephone from the St. Petersburg office, and told me he had received such a telegram, and I was to take the station off the air immediately."

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And she thereupon carried out Mr. Fields' instructions (R. 1815).

36. Mrs. Douglas also identified Fields Exhibit No. 2:

"Mr. James C. Fields, the owner of the Paging system, is to admitted to the office at any time and his instructions on the Paging system carried out to the letter."

and stated that the above legend had been posted on the bulletin board "right beside the FCC license in the Tampa office" (R. 1816) ever since the pocket paging began.

37. Another operator, Bea Langford, testified that Fields Exhibit No. 2 had always been posted on the bulletin board ever since the Fields pocket paging first went on the air in March, 1958 (R. 1827, 8).

38. Fields made clear that he had no thought of going into the radio paging business if he had to provide space, equipment, personnel and all requirements. He was convinced that it was not profitable to engage in such a business without an auxiliary business (R. 983).

39. The engineering data for the Fields station was ordered by Fields himself who telephoned Edward W. Deeters of the Engineering

firm of William L. Foss, Inc. in Washington and authorized him to prepare such data and submit it to the Commission (R. 991). Fields frankly stated that he could find no record showing that he had paid Deeters for such work but he was quite confident that he had paid him and recalled that the amount was approximately \$75 or \$100 (R. 992). Fields thought that most of it was

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handled by telephone. This testimony was given by Fields in Tampa on March 1, 1961 (R. 992). Deeters was not a witness at any time during the Tampa hearing which lasted three weeks and which ended on March 8, 1961. (R. 992).

40. The Commission's staff adduced detailed testimony in an effort to establish, by innuendo and otherwise, that this work was paid for by Pinson (R. 2-33-36). However, Deeters, when he testified in Washington on April 20, 1961 fully corroborated Fields' memory of what had transpired and stated that he had received a telephone call from Fields asking him to proceed with the engineering for the Tampa station (R. 1947). Deeters also recalled that he had been paid for this work by Fields (R. 1948). Deeters could find no record indicating with certainty by whom he had been paid but it was nevertheless his recollection that payment had been made by Fields (R. 1949).

41. Deeters was unable to state, either from his independent recollection or from any records, that any check received by him at any time in the past from Charles P. B. Pinson, Inc. or Pinson individually was identifiable as a check in payment of the engineering work performed by him at the request of Fields (R. 1950). Indeed, after rigorous cross-examination by Commission counsel, Deeters finally testified that a check of \$170.60 which he had received from Pinson was not in payment of the charges incurred for the Fields engineering. Deeters stated at page 2036: "I don't feel that the check for \$170.60 had anything to do with the Fields engineering."

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42. There is no testimony or any other evidence to dispute the fact that Fields, without consulting Pinson, ordered Station KIK 578 off the air immediately upon receipt of the Commission's telegraphic order on March 10, 1958. Pinson's testimony (R. 600, 1) is fully consistent with the testimony of Fields and Douglas and with the telegram itself. Pinson further testified that when he received notification from Fields (after Fields had ordered Mrs. Douglas to take the station off the air) he verified the message himself by telephone to Western Union (the telegram, which is in evidence, shows the message was reread at 7:56 P.M.) and then, at Fields' request, went to Tampa from St. Petersburg to "check it for him to be sure that this station was inoperative" (R. 600).

43. The radio paging equipment of Fields' Station KIK 578 has been maintained since it first became operative in March, 1958 by Radio Service, Inc. of Tampa. DeWitt C. Bailey, who has been manager of Radio Service, Inc. since 1950, testified that his company has maintained on a 24-hour basis all service required and that such service included making monthly inspections of the transmitter (R. 441), taking readings of the two meters located on the transmitter, and making such frequency modulation and power measurements as are required by the applicable Commission rules and regulations (R. 435).

44. Mr. Bailey further testified that his company also has a contract with Charles P. B. Pinson, Inc. to maintain the equipment of Station KIB 386 (R. 435). Radio Service, Inc. separately itemizes billings to

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reflect separately the services performed for the two stations (R. 447). The monthly charges to Fields for service to Station KIK 578 would be twice as large but for the fact that Radio Service, Inc. was also under contract with Station KIB 386, owned by the Charles P. B. Pinson Company (R. 449). The technical competency of Bailey was clearly established (R. 432). He has held a first class radio-telephone operator license and a first class radio-telegraph operator license for more than

20 years (R. 431), and Radio Service, Inc. has maintained the equipment for General Telephone Company in the Tampa area for seven or eight years (R. 433).

45. There is no issue in the proceeding as to improper operation of Station KIK 578 (R. 442).

46. Pinson testified that the statements contained in the letter dated March 17, 1958 addressed to the Secretary of the Federal Communications Commission and signed by him as President of Charles P. B. Pinson, Inc., and sworn to and subscribed before a notary on the same date, which instrument was introduced into evidence as Pinson Exhibit No. 1, were, to the best of his knowledge, information and belief, true and correct when made (R. 534).

47. Pinson testified that the letter signed by James C. Fields on the same date and addressed to the Secretary of the Commission, also signed by Pinson was true and correct (R. 535).

48. Pinson testified that to the best of his knowledge, information and belief the statements contained in the documents comprising Pinson Exhibits 1 and 2 were true and correct (R. 538).

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49. Pinson testified that he is a son-in-law of James C. Fields, having married his daughter, Nancy, and that he is the father of Barbara and Charles Pinson, the grandchildren of Fields. Barbara was five in August and Charles was four in December, 1960. Pinson testified that he performed certain construction work for Fields and built a carport for him and that a normal family relationship existed between them for a great many years. Pinson further stated that he was not furnishing any money to Fields for the operation of the paging station in Tampa owned by Fields (R. 546). Fields had never advanced any money or loaned any money to Pinson and there are no loans outstanding between Fields and Pinson personally or between Fields and the Pinson corporation (R. 549).

50. Pinson testified that neither he nor Charles P. B. Pinson, Inc. has ever been found by any competent authority to have violated any federal statute pertaining to income tax or to wages and hours of employees (R. 549).

51. Pinson testified that he and his company had always attempted to abide by all the rules and regulations of the Commission. Pinson further testified that he had never been convicted of any crime involving moral turpitude or of any felony (R. 550).

52. Counsel for Fields and Pinson moved to incorporate by reference all financial and other statements and exhibits filed by Pinson and Fields in connection with all stations for which renewal applications are pending (R. 551).

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53. Pinson was generally well informed on the mobile radio communications industry (R. 586). Pinson received an honorable discharge from the United States Army on December 12, 1945 (R. 899). He was attached to the 3rd Technical School Squadron, Air Force, Lowry Field, Denver, Colorado and received a commendation. He was recommended on November 7, 1945 for Officers Candidate School, after serving as B-29 Flight Engineer Instruction, his commanding officer stating in part: "He has had officers as students . . . and has clearly shown leadership to a high degree. His character is excellent and he appears to be generally a good, clean and conscientious soldier. His bearing and appearance is excellent" (R. 900-1).

54. Pinson received an award on December 4, 1959 from the Florida Nurses Association "for outstanding service to the profession of nursing and to the Florida Nursing Association", in connection with furnishing telephone answering service (R. 903, 4).

55. In a campaign for representative from Pinellas County (St. Petersburg) in the Florida legislature, Pinson received approximately 60,000 votes (R. 472).

56 Pinson was engaged in the building and construction business from 1947 to 1958, during which period he designed approximately 1,000 blueprints of houses and supervised the construction of approximately 130 structures, mostly single-family residences (R. 1976). Pinson poured the supporting structure and built the monitoring radio tower located on the Pinson company's

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property in St. Petersburg. Pinson was a certified flight engineer and was issued the appropriate aeronautical rating by the United States Air Force (R. 1797). He was employed as an engineer by Baylis Equipment Company in Tampa in the installation of water softening equipment, plumbing and boilers (R. 1880).

57. Mrs. Helen Smith Distler had been employed by the Pinson company in March 1959 as a bookkeeper and secretary. She recalled the occasion when Gladstone and other FCC personnel came to the Pinson company's offices on March 30, 1959 (R. 1725). She stated that Gladstone was in the office when she returned from lunch about 1:30 P.M. (R. 1726), at which time he was sitting at her desk looking at some papers thereon (R. 1727).

58. She identified a document which she typed that same afternoon or next day at the request of Pinson: namely, Pinson Exhibit 10. She had not seen the document from 1959 until about two weeks before she testified on March 1, 1961 (R. 1734).

59. Pinson Exhibit 10 recites that "It was obvious that Mr. Gladstone had been going through the files and correspondence on my desk. Mr. Gladstone showed me his identification and then took over the office completely." The Exhibit also contains the following:

Mr. Gladstone asked to see the advertising literature which we send out. I informed him the only thing we sent out was a form letter to businesses. He asked for a copy of this letter which I gave him.

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He also asked for some old advertising literature. I went into the room in the rear of the building and obtained a card, as attached. When I returned Mr. Gladstone was going thru our filing cabinet. I did not extract any papers from it, but I did see him consult our Monthly Statement from the Florida National Bank. Mr. Gladstone asked me about Mr. Fields' account. I showed him the page in the Accounts Payable Ledger. He asked me for proof of the "Sales" figures, which I could not give him. He told me to type a copy of the ledger sheet for Mr. Fields and sign it. . . . Mr. Gladstone referred to the delinquent account letters which were on my desk and showed me one in particular. It was addressed to Burnes Air Conditioning & Heating (copy attached hereto). He asked me if this referred to Tampa Pocket Paging and I replied that it did. He then told me to type a copy of it and sign it. Mr. Gladstone and Mr. Harrison went thru, card by card, our ledger cards. Several they hesitated at but I did not see them make any notes. Mr. Gladstone took a sample of our bills. (underscoring added)

60. Pinson gave Mrs. Distler no instructions about what to put in the letter, simply asking her to write what she remembered that day (R. 1731). Mrs. Distler was employed by the Pinson company seven or eight months, resigning in September 1959 (R. 1732). Mrs. Distler was a voluntary witness (R. 1733). She spent approximately two hours with Gladstone until the arrival of Fields at 3 or 3:30 P.M., (R. 1736, 7) and testified she felt that Gladstone has been looking at corporate letters on her desk when she entered. Pinson arrived around 3:30 or 4:00 P.M. (R. 1736).

61. She did not sign or initial Pinson Exhibit 10 (R. 1943), but she definitely recognized that it was her writing, stating at page 1744:

"It is in my manner of talking; that is all; the way I put things.

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And then it has the type of things that I remember. Once I have read it, it recalls them to my memory."

The witness had a clear recollection after seeing the Exhibit that the events described therein actually occurred as she wrote them (R. 1748).

62. In the absence of any official of the Pinson company, and at the direction of Gladstone, Mrs. Distler got various documents and showed them to him (R. 1751) and typed various documents, signed her name thereto as directed by Gladstone and turned them over to him: See Pinson Exhibit 10. She also testified that Gladstone looked through the ledger cards on her desk and the general ledger of accounts (R. 1752).

63. The witness testified she would have come to testify whether or not she were paid anything, that she had no interest other than to speak the truth, that Pinson made no promise of any kind to induce her to come to the hearing (R. 1755).

64. Mary Gaskins, an operator for Charles P. B. Pinson, Inc. for the past three years, testified that she was first employed in April, 1958. She recalled the occasion on March 30, 1959 when Arthur A. Gladstone visited the company's offices in St. Petersburg. At that time she was a service operator. Miss Gaskins informed Gladstone that Pinson was out to lunch and the secretary-bookkeeper, Helen Smith (later Helen Smith Distler), was also out. She asked Gladstone to be seated in the outer office until the secretary returned (R. 1762). Miss Gaskins then returned to the control room (R. 1763). This conversation occurred during the lunch period, shortly after 12 o'clock. Miss Gaskins testified that she indicated Mr. Gladstone should be seated in the outer office which was separated from

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the bookkeeper's desk by a glass wall and a glass sliding door which was customarily kept closed when the bookkeeper was not present. She testified that this door was closed when she first went out to see Gladstone

(R. 1764, 5), that when she returned to the rear of the building she closed the glass sliding door.

65. Miss Gaskins further stated that she saw Helen Smith several times after Miss Smith returned from lunch and after Miss Smith went up to the front office (R. 1765), that Helen Smith asked that steps be made to locate Pinson, whereupon she immediately started making attempts to locate him. Miss Gaskins testified that Helen Smith returned to the rear part of the building where the switchboard was located on several occasions (R. 1766) and that "she seemed highly nervous and had tears in her eyes". At this point the following colloquy occurred:

MR. DEVORE: I object. I ask that the response of the witness be stricken from the records. It is calling for a mental operation on the part of this witness to describe a physical appearance of another person. I don't know how this witness can testify to such a matter.

PRESIDING EXAMINER: Do you wish to answer the objection, Mr. Newfield?

MR. NEWFIELD: Yes.

Your Honor, the question called for her to state what she observed. It didn't require any mental operation at all except the use of eyesight. And I submit that the witness is thoroughly competent, and it is obviously permissible to state what she observed as to the witness.

MR. DE VORE: Mr. Examiner, let me point out that Helen Smith Distler was a witness in this proceeding. There was no question placed to her by counsel as to what her state or emotional state was, during the proceeding. If

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the best evidence were to be presented, it would have been the statement of the witness herself. Now to try and establish through this witness what the emotional state of Helen Smith was at the

time, I suggest to you is improper. It is not the best evidence.

PRESIDING EXAMINER: For the reasons just stated by counsel, I am granting the motion to strike. It would have been permissible as corroborating evidence, but the party did testify and no such evidence was given by her.

MR. NEWFIELD: Do you mean, Mr. Examiner, you will not permit this witness to answer a question as to what she observed as to the demeanor of this witness? The appearance of this witness?

PRESIDING EXAMINER: In view of the fact that it could have no possible weight in the absence of testimony by Miss Smith, as her name was at that time, I am granting the motion to strike.
(R. 1767, 8).

66. The Commission Staff subpoenaed Joseph H. Wofford from Houston, Texas as a surprise witness and he testified on March 3, 1961 in Tampa with reference to negotiations with Pinson for the sale of Wofford's two-way mobile radio station in Tampa. Wofford stated that his first contact with Pinson was in the summer of 1956 when Pinson telephoned him about selling Wofford's station in Tampa. Wofford told Pinson he was not interested (R. 1411). Later in February 1957, according to Wofford's first testimony, Pinson made several telephone calls and the contract was finally negotiated on May 29, 1957 (R. 1412).

67. The tendency of the aforesaid evidence was to impeach testimony by both Fields and Pinson as to the circumstances under which Pinson withdrew his application for a Tampa license and the inception of Fields' application for a Tampa license.

68. On cross-examination, after the contents of the official Commission station file KIB 386 had been brought to Wofford's attention by counsel for Fields and Pinson (R. 1418), Wofford realized that he could not have signed the May 29, 1957 contract submitted to him by Pinson on

that date (R. 1420). Wofford explained that his prior direct testimony that the contract had been negotiated on said date was based entirely on a notation he found in his Houston files (R. 1423) that such a contract was effective May 29, 1957. The contract filed with the Commission did not show any signature by Wofford (R. 1866).

69. Wofford subsequently admitted that the Form 702 application for consent to assign the station was not signed by him until July 12, 1957 (R. 1422). As later brought out on March 8, 1961 (after Pinson had had an opportunity to examine his St. Petersburg files), it was clearly established by Pinson Exhibit 14 that the only executed contract was dated June 24, 1957, was signed by Pinson on that date and by Wofford on June 28 and that the May 29, 1957 contract was thereby "declared null and void" (R. 1858).

70. The entire sequence of events relating to the acquisition by Charles P. B. Pinson, Inc. of station KIB 386 from Wofford is clearly demonstrated by Pinson Exhibits 11 - 22, both inclusive. Commission authority to make the assignment was granted on October 28, and the assignment was made on December 3, 1957 (R. 1867).

71. Joseph H. Wofford had been excused as a witness over the objection of counsel for Pinson and Fields who stated that he might wish to recall Wofford after having

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had an opportunity to check appropriate correspondence (R. 1428). Commission counsel objected to such request by counsel for Pinson and Fields and remarked that "This man has come all the way from Texas" and the Presiding Examiner refused to permit further cross-examination unless it were done at that time (R. 1430). The witness was thereupon excused (R. 1431).

72. It was then indicated that Mr. Wofford would remain in Tampa overnight to afford Pinson an opportunity to examine correspondence in his St. Petersburg office. Although the Examiner was unwilling to hold a

session the next day (Saturday) (R. 1432), and although Mr. Rosenson had no objection to a night session that same Friday evening (March 3) from 8 until 9 o'clock, Mr. De Vore objected, whereupon the Presiding Examiner made the following statement: "I think you will have to recognize, Mr. De Vore, there is an extreme element of surprise in the production of this witness and going into this line of questioning". The Examiner declined to hold a hearing that night but agreed to do so the next morning (R. 1433). It was made clear by counsel for Pinson and Fields that "until the moment Mr. Wofford stepped on the stand we didn't know the identity of this witness which was carefully concealed" (R. 1433).

73. Commission counsel was so solicitous of Mr. Wofford's travel convenience and was so concerned that Wofford not be permitted to testify further that, even though Mr. Rosenson had consented to a session the next morning at which Mr. Wofford would again take the stand, Mr. De Vore assumed the role of advocate for Mr. Rosenson and made the following gratuitous statement at page 1434:

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PRESIDING EXAMINER: I stated I could not see how Mr. Rosenson would be prejudiced if he were not here.

MR. NEWFIELD: Yes.

If we adjourned at the closing time, say of 4:30 --

PRESIDING EXAMINER: I have fully intended to do that.

MR. NEWFIELD: This is an element of surprise, too.

MR. DeVORE: Mr. Examiner, let me point out I think you are wrong in your conception of Mr. Rosenson's participation in this proceeding. His succeeding in regard to the application for a license for a one-way paging station in Tampa may very well depend on the conclusions reached with regard to both Mr. Fields and Mr. Pinson and their operation of the Tampa station. To exclude and say Mr. Rosenson has no interest in the bona fides of

Mr. Pinson I think is missing the issues that are involved in this proceeding.

74. Mr. Wofford was permitted to take the stand late on the afternoon of March 3 after having had his memory refreshed by reference to the official Commission station file and to a part of Pinson's file which happened to be then available. Wofford explained that he had found nothing of any substance in his records in Houston (R. 1447) and stated flatly that the contract finally executed between the parties was dated June 25, 1957 (R. 1450).

75. Counsel for Pinson and Fields again requested the Examiner to permit him to place Wofford on the stand the next day after an opportunity had been afforded Pinson to check his files in St. Petersburg for further documentary evidence relating to the transaction, provided this were convenient with Mr. Wofford. However, this request was refused, the Examiner stating: "I have afforded you the opportunity to put Mr. Wofford back on. I will not hold him any longer nor will I

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hold a session tomorrow morning" (R. 1450).

76. It was finally made clear, when Pinson testified on March 8, 1961, from Pinson Exhibits 11 - 22 and from Pinson's testimony, that Wofford's first recollection was faulty as to the year in which negotiations relating to the acquisition by the Pinson company of station KIB 386 from Wofford occurred. The documentary evidence located by Pinson showed conclusively that said negotiations began when Pinson telephoned Wofford on May 29, 1957 (R. 1872). Irrefutable evidence was also adduced showing that Pinson and Wofford did indeed carry on discussions relating to the sale of a station owned by Wofford during the same span of months: January to April as first testified to by Wofford (R. 1426). However, these negotiations occurred in 1959, not in 1957 and related to Wofford's station located in Jacksonville, Florida not to Wofford's Tampa station (R. 1873-4).

77. Finally, there was no evidence with reference to Pinson's negotiations with Wofford which would refute in any way Pinson's testimony regarding acquisition of station KIB 386 or the inception of Fields' application or Fields' intention to apply for a license for a Tampa station.

78. Activities of and decisions made by James C. Fields in connection with Station KIK 578 demonstrate that Fields was the real and not merely the nominal owner of said station. These include the following:

(a). Upon receipt of the Commission's telegram on March 12, 1958 Fields himself instructed the duty operator to remove Station KIK 578 from the air

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immediately (R. 965). He then called Pinson, instructed him to go to Tampa and make certain the station was inoperative (R. 965).

(b). Fields received income from the station and paid income taxes thereon from the date the station went on the air in March 1958 (R. 971-3).

(c). Between the time when Pinson withdrew his application for a Tampa paging station license (October 17, 1955, R. 563, 565) and the time when Fields signed his application for a Tampa license a year later (October 3, 1956, R. 570), Fields gave consideration to the matter (R. 953-5). Thereafter, Fields made preliminary inquiries as to facilities in Tampa but was still undecided and withheld filing his application until January 1957 (R. 956, 572). The letter transmitting the application was prepared at Fields' instructions (R. 957). On May 27, 1957 Fields signed a letter requesting 10 days additional time in which to file engineering data (R. 958). Fields made a budget for various equipment and expenses (R. 975), assisted in preparing exhibits to the application (R. 978-980) and made studies relating to rates and tariff (R. 981).

(d). Fields personally contacted the engineering firm in Washington and ordered engineering data (R. 991), and made payment for this

work (R. 992). Fields was generally familiar with Part 21 of the Commission's rules and regulations (R. 995), assisted in the preparation of an application and exhibits for modification (change of location of antenna) (R. 996-7).

(e). When Pinson notified Fields that the transmitter had arrived in St. Petersburg, Fields refused to accept delivery, instructed that it be sent to Tampa,

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and asked Pinson to have Radio Service, Inc. (Bailey) to make the installation (R. 1011).

(f). When Pinson presented Fields with the bill (\$741.77) covering the cost of the transmitter on March 3, 1958, Fields immediately issued his check in payment (R. 1002, 4). These transactions occurred on March 3, 1958 because the Fields station was just put in commission or was just about to go into commission and Pinson and Fields desired to put matters on a business-like basis in writing (R. 1005).

(g). Fields solicited accounts for his station (R. 1021).

(h). Fields had access to accounts kept by the Pinson company pertaining to Station KIK 578 and there were periodic written accounting settlements submitted by the Pinson company (R. 1061). Fields made a number of visits to the Tampa office of his station, is generally familiar with the installation and with the station log, and has seen to it that requirements of applicable rules were adhered to, and instructed Pinson not to allow any employees to "get out of line" in carrying on the operation of the station, and reminded Pinson that Fields is responsible for its operation (R. 1078-9). See Accounting - Fields Ex. 9 Rejected.

79. Charles J. Magee, auditor employed by the Pinson company, testified as a witness subpoenaed by the Commission that on February 12, 1961 Arthur A. Gladstone interviewed him with reference to auditing work which he had done for the Pinson company. He testified that when Gladstone was leaving he requested Magee not to reveal to Pinson that he had come to see

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Magee, whereupon Magee told Gladstone that he felt obliged, under accounting ethics, to inform his client that Gladstone had been there. Gladstone then asked Magee not to reveal the nature of the conversation (R. 1129).

80. Magee flatly contradicted Gladstone's testimony that he had at the very beginning of his discussion with Magee on February 12, 1961, informed Magee that he had a constitution right not to discuss the matter (R. 109). Magee stated: "I don't recall Mr. Gladstone making any statements about my constitutional rights at any time over there." (R. 1134).

81. The Commission sought to establish that Pinson falsely represented that Form L information filed by the Pinson company with the Commission had been prepared by his accountant. The testimony of Magee clearly tended to establish that there was no such false representation. Magee testified that he had prepared income tax returns for the Pinson company from 1952 to date (R. 1136, 7). Specifically, Magee testified that he devoted approximately three weeks time to the preparation of the corporation's return for the fiscal year ended November 30, 1958 (R. 1137). Magee testified that he is a member of the National Association of Public Accountants, the Florida Accountants Association and the National Association of Tax Accountants. He stated that he followed accepted accounting procedures deemed necessary in the circumstances to satisfy himself that the returns were accurate, true and correct (R. 1140, 41), he was afforded adequate and full cooperation by Pinson individually, who made available such records, documents

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and other data of the corporation as were required, and Pinson responded readily to every request for information made of him (R. 1141).

82. Contrary to the impression sought to be created by Commission counsel that Magee had done little accounting work for the Pinson company and was wholly unfamiliar with the Form L report for 1959,

Magee testified that in the preparation of his returns for the corporation, he took all the records of expense, all the assets of the company and all income of the company into account. This involved a review of the bank deposit statements for the company, records of money owed on notes, and notes receivable (R. 1142). Magee further stated that he verified notes receivable and checked the mortgages held by the corporation securing said notes, and examined each of these items as to the balances due on the mortgages (R. 1143). He checked and verified by physical inspection notes payable by the corporation (R. 1144), verified and reconciled balances and checked periodic reports from banks reflecting collection of monies due on notes payable to the corporation (R. 1145). Magee also examined deposit slips and verified that they had been stamped by the bank (R. 1146).

83. With reference to a letter dated December 15, 1960 signed by Pinson and addressed to the Commission, stating that the Pinson company was attaching a balance sheet as of December 1, 1959, Magee testified at R. 1147 the original Schedule L which he prepared and which was attached to the income tax return of the Pinson company (R. 1150) contained the same figures as were reflected on the Schedule L balance sheet filed with the Commission, which was transmitted by Pinson to the Commission with

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the statement: "Attached hereto are the financial reports filed by our accounting firm for attachment to our Form L reports as requested by you . . ." (R. 1149).

84. With reference to the balance sheet of Charles P. B. Pinson, Inc. as of December 1, 1959 (R. 1153), Pinson showed Magee the Form L report and asked Magee precisely how the financial statement should be prepared for filing with the Commission (R. 1154) and Magee testified he told Pinson: "All he had to do is take the scheduled depreciation which I had already prepared for tax purposes and each item was listed in there separately and I said 'all you have to do is take out those

particular items and add up your depreciation and subtract it from the value of the assets and then you have the book value, what it is worth today'" (R. 1154, 5). Magee further testified that Pinson on that occasion showed Magee a proposed return with some penciled figures thereon, whereupon the following conversation occurred:

A. Well, he asked me, "Now," he said, "Will this tell them what they want to know?" And I looked it over and I said "Yes", but I said, "Just for your own safety I would state at the bottom that it did not reflect the money owed to you," and according to this he followed my advice and put it on, that this report did not reflect the amount of money owed to Mr. Pinson.

Q. Is this the exact language you suggested he append?

A. Yes, that is just what I was talking about, it doesn't reflect the amount of money owed.

MR. DE VORE: Didn't you ask the witness to refer to the document in your hand?

MR. NEWFIELD: No, I did not show him this copy.

BY MR. NEWFIELD:

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Q. Have you seen this copy, have I shown you this copy just now?

A. No, Sir.

PRESIDING EXAMINER: Let the record show that it is a document which counsel has.

MR. NEWFIELD: I would like the record to show also that Mr. Gladstone stated sotto voce that I had shown it to him.

PRESIDING EXAMINER: Well -- let us proceed with the cross-examination.

MR. GLADSTONE: If that statement is on the record, Mr. Examiner, I would like to reply to it.

PRESIDING EXAMINER: I will allow you to reply whether you did or did not make the remark.

MR. GLADSTONE: I would like the record to show that I suggested to Mr. De Vore that Mr. Newfield had exhibited that document to the witness.

85. In summary, Magee testified that if Pinson had followed Magee's suggestions and had accurately taken the figures which Magee himself had compiled and placed on the corporation's income tax return, and had eliminated the items Magee referred to which had no relation to the radio operations of the Pinson company, the figures reflected on the balance sheet as of December 1, 1959 would have been the equivalent of the applicable figures taken from Schedule L filed with the Commission (R. 1157).

86. Pinson went to Magee's office and asked him to prepare the balance sheet submitted to the Commission on the Form L report, whereupon Magee took out his copy of the corporate return for the year ended November 30, 1959 (R. 1159) and showed Pinson how he could obtain from that the necessary information and stated to Pinson:

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"It isn't a matter of making another balance sheet, you have it right there, you can just take it off the tax return and you have just what they want" (R. 1159).

87. After Magee had been cross-examined by counsel for Fields and Pinson, the Examiner announced an adjournment until after lunch, whereupon Commission counsel stated: "Mr. Magee is our witness and I am not going to permit Mr. Newfield or Mr. Pinson to use the luncheon recess to consult with Mr. Magee or to try to prepare this information at that time . . ." (R. 1162).

MR. NEWFIELD: I appreciate the solicitude of counsel for this witness' convenience, but let me point out, your Honor, Mr. Magee is the auditor of the Pinson company and we have a perfect right to put him on the stand as our witness any time and consult with him any time without the presence of counsel for the Commission (R. 1163).

88. Jules G. Victor, building superintendent of the Florida National Bank Building in St. Petersburg, testified for the Commission in an effort to impeach the credibility of John Staly, engineer for the Pinson company, who had previously testified about difficulties encountered in keeping antenna equipment located on the roof of said building in good operating order (R. 300 - 08; 344, 346, 348). Victor's credibility was substantially questioned (R. 1278, 1283, 1285), (Pinson Exhibit 9 - alleged contemporaneous notes made by the witness), and (Pinson Exhibits 23 - 36: photographs of the fire escape, roof and structures thereon).

89. Robert L. Heidt was a Civil Engineer employed in the office of R. G. Merrin, Tampa which was employed by the Pinson company to make a sketch of the Wallace S. Building on top of which was located

the Fields' antenna. Heidt is a registered engineer and land surveyor. He certified to the sketch introduced into evidence as Fields' Exhibit 6. He was brought to Washington at the re-opened hearing to impeach statements made by Pinson on the basis of which said exhibit was admitted into evidence. Heidt's expenses to Washington were paid by the Commission and he testified as the Commission's witness.

90. Heidt was instructed by Commission counsel not to talk to Pinson or Newfield (R. 2142). Alfred L. Ritter, a Commission employee stationed in Tampa, came to see Heidt and obtained a statement from Heidt which was used to re-open the hearing. Heidt testified regarding Ritter: "I presume he was a member of the FCC or the FBI or something, I don't know" (R. 2154). The measurements were made by Heidt

for Fields and the charges were billed to Fields and paid by him (R. 2162). Heidt did not contact Pinson and tell him Ritter had called on him. After Heidt was served with a subpoena by the U. S. Marshall's Office, he telephoned Gladstone collect from Tampa in Washington and asked him what it was all about and what he would be paid for traveling to Washington. Heidt was not given any money prior to leaving Tampa to cover expenses (R. 2164, 5).

91. Heidt asked Gladstone if it would be all right if he contacted Pinson, to which Gladstone stated in effect that he would just as soon Heidt did not contact Pinson. Heidt told Pinson that he "had a fear of the Government" and did not want to become involved more deeply (R. 2238) and did not tell Pinson he had received a subpoena from the Government.

92. All the time that Heidt was present at the Wallace S. Building, Pinson was also present (R. 2176) and the two employees of the engineering firm (Fredlund and Pawson) who made the measurements under Heidt's supervision, reported to Heidt that when they were making measurements of the building, Pinson was also present.

93. Lloyd K. Fredlund, an employee of Merrin Engineering Company, was brought to Washington by the Commission and placed on the stand as its witness in an attempt further to discredit the testimony previously given by Pinson. Fredlund testified that he made the measurements, which were later depicted on Fields' Exhibit 6, with the assistance of Tom Pawon. Fredlund at first testified in effect that while he saw Pinson on the roof of the penthouse on top of the Wallace S. Building, he could only recall seeing Pinson up there and did not recall having any conversation with Pinson concerning measurements and could not even recall the subject matter of the casual conversations he had with Pinson on that occasion. The witness definitely could not recall Pinson doing anything insofar as making any measurements was concerned (R. 2282, 3).

94. On cross-examination, Fredlund acknowledged that the method which Pinson testified had been employed in measuring the height of the Wallace S. Building from the ground, was the method actually used (R. 2304); that there was no indication on Fields' Exhibit 6 showing the point where the measurement was made and that Pinson on June 26, 1961, more than three months after the date upon which the measurements were actually taken on March 7 and 8, pointed out to Fredlund

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and Heidt the approximate spot along the west wall of the building where said measurement was in fact made (R. 2305).

95. Fredlund corroborated Heidt's testimony that he wanted to contact Pinson to find out what the hearing was about (after receiving a subpoena from the Commission) but that Gladstone recommended against it (R. 2308).

96. Fredlund admitted that Pinson had offered to go to the Wallace S. Building and show Fredlund the exact spot on the west wall where the measurement was taken but that Fredlund had declined to go (R. 2310-11).

97. Fredlund further corroborated that he went through the exact procedure as outlined by Pinson, including the placing of a mark on the penthouse wall, in making further measurements (R. 2312). He also acknowledged that there was nothing on the sketch which would indicate where the mark was placed. The witness conceded that there were alternate methods for making the measurement of the penthouse (R. 2313-14). He stated that it could have been done from any convenient spot along the east side of the building and that measurements could have been taken in other places as well (R. 2315, 2327, 2329).

98. The witness acknowledged that Pinson was on the roof of the building on March 8 when the measurements were being made, between 11 A.M. until 1 P.M. and that possibly Pinson could have been there as much as three hours on that occasion.

99. The witness further conceded that the method used to compute the height of the structural mast, as described by Pinson, was the actual method employed

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by Fredlund (R. 2341, 2, 3).

100. Fredlund also admitted that he recalls discussing the measurements on the sketch as finally prepared and delivered to Pinson on the afternoon of March 8, and that Pinson compared the sketch dimensions with figures which Pinson had and remarked that the figures were similar (R. 2348). Specifically, Fredlund recalled Pinson stating: "Well, that is awfully close to what I have for the top of the tower" (R. 2359).

101. Fredlund recalled that Pinson was on the roof of the penthouse when the tower was being assembled and that "... we compared what he had per unit of the tower with what I had" (R. 2360). The witness definitely recalls seeing Pinson use a six-foot folding rule for the purpose of making measurements (R. 2361), and he recalled seeing Pinson climb to the top of the penthouse before the antenna was erected and saw him make several measurements (R. 2362), including the pipe support at the base of the antenna (R. 2363), the radial arms and possibly the trombone (R. 2366, 7). He also recalled seeing Pinson take some measurements of the sections of antenna tower lying on the roof before they had been erected on top of the penthouse, and that he and Pinson compared the latter's measurements which were in feet and inches whereas Fredlund's were in tenths of feet (R. 2368).

102. Finally, Fredlund testified that he answered a written question put to him by Ritter in the negative, (which question called for personal knowledge of Pinson's activities relative to measurements of the Wallace S. Building), because he construed the question

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to inquire whether Pinson had taken any measurements which would affect the work Fredlund and Pawson had already done (R. 2381), and that

he did not wish to give anyone the impression that Pinson had participated in making the measurements for which he and his firm were responsible (R. 2381, 2).

PROPOSED CONCLUSIONS OF LAW - JAMES C. FIELDS

Based upon the foregoing Findings of Fact, the proposed Conclusions of Law are as follows:

1. The technical and character qualification of James C. Fields to be a licensee are satisfactorily and fully established.

2. James C. Fields was cognizant of the statement made to the Commission on March 17, 1958 by Charles P. B. Pinson relative to the operation of Station KIK 578.

3. The statements referred to in paragraph 2 were not untrue in any material respect and the preponderance of the evidence is that there was no intent on the part of Pinson to mislead or misinform the Commission.

4. Neither Charles P. B. Pinson, Inc. or Charles P. B. Pinson individually made false or misleading representations to the Commission or its representatives relevant or material to the grant of radio authorizations for Station KIK 578 or material and relevant to the use and operation of such station.

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5. The statement made to the Commission on March 17, 1958 by James C. Fields, relative to the operation of Station KIK 578 was true and correct when made and Fields had no intention of misleading the Commission or any of its representatives in any respect.

6. James C. Fields has made no false or misleading representations to the Commission or its representatives relevant and material to the grant of radio authorizations for Station KIK 578 and material and

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6. James C. Fields has made no false or misleading representations to the Commission or its representatives relevant and material to the grant of radio authorizations for Station KIK 578 and material and

relevant to the use and operation of such station.

7. The control and operation of station KIK 578 was retained by James C. Fields, but Charles P. B. Pinson, Inc. and Charles P. B. Pinson, as the president and chief executive officer of the Pinson company, conducted operations under contract with Fields covering said station, including the furnishing of personnel. Legal and equitable title to the equipment for the operation of said station was in Fields' name although the purchase of parts thereof, including receivers, was handled on behalf of Fields by Pinson. James C. Fields was the father-in-law of Charles P. B. Pinson, by virtue of Pinson's marriage to Nancie, the daughter of James C. Fields. Nancie and Charles Pinson had two children who were the grandchildren of Fields. A normal, friendly relationship existed between the Fields and Pinson families.

8. The conditional sales contract covering acquisition by Fields of a Budelman transmitter, and a check in payment of such equipment, were executed by Fields on March 3, 1958, because of the recognition

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by Fields and Pinson that transactions between the two involving the operation of the new Station KIK 578 should be on a business-like basis. This station went on the air on or about March 1, 1958 and this was the principal reason why the foregoing documents were drawn and executed on March 3, 1958.

9. There is insufficient evidence to support a conclusion that James C. Fields has violated the provisions of Section 310(b) of the Communications Act of 1934, as amended and Section 21.29(h) of the Commission's rules in relation to Station KIK 578.

10. There is no sufficient justification, on the basis of the evidence adduced in the hearing, to disqualify James C. Fields for reasons, other than technical qualifications, from being a licensee.

11. The service now provided by Station KIK 578 in Tampa, taking into consideration rates charged, practices, classifications, pertinent

regulations, and facilities pertaining thereto, justify renewal of the license to James C. Fields.

12. The area and population presently covered by Station KIK 578 in Tampa and the area and population proposed to be covered by Alan H. Rosenson, are substantially the same, except that the population covered by the existing station is slightly greater.

13. Pocket paging service as now furnished and proposed by James C. Fields, and as proposed to be furnished by him if his license is renewed, will adequately and satisfactorily meet the needs of the public for such service without in any way lessening

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lawful competition, and renewal of the Fields' license would tend to serve more adequately members of the public than if said license were not renewed and a license were granted to Rosenson.

14. On the basis of applicable engineering standards relative to the 43 dbu contour, harmful interference would result from simultaneous co-channel operations on the frequency 35.22 Mc by Station KIK 578 and KIQ 516 at Tampa and, in view of the nature of the service proposed, such service would be undesirable.

15. The reasons for which Alan H. Rosenson seeks to modify the existing construction permit for Station KIQ 516 to change the authorized frequency of his proposed station from 43.22 Mc to 35.22 Mc, are to eliminate competition from Station KIK 578.

16. The public interest, convenience and necessity, in the light of the evidence adduced, would be better served by the renewal of license application for Station KIK 578.

**PROPOSED CONCLUSIONS OF LAW -
CHARLES P. B. PINSON, INC.**

Based upon the foregoing Findings of Fact, the proposed Conclusions of Law are as follows:

1. Charles P. B. Pinson's technical and character qualifications were satisfactorily established by the evidence.

2. The Commission staff failed to carry the burden of proving the charges of wrongdoing it alleged on the part of Pinson and Fields.

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3. The statement made to the Commission on March 17, 1958 by Charles P. B. Pinson, relative to the operation of Station KIK 578 was true and correct when made.

4. The preponderance of the evidence adduced failed to establish that Charles P. B. Pinson made any untrue statement in said March 17, 1958 statement to the Commission with intent to mislead and misinform the Commission.

5. Neither Charles P. B. Pinson, Inc. nor Charles P. B. Pinson made any false and misleading representations to the Commission and its representatives relevant and material to the grant of radio authorizations for Station KIK 578 and material and relevant to the use and operation of such station.

6. Neither Charles P. B. Pinson, Inc. nor Charles P. B. Pinson has violated the provisions of Section 310(b) of the Communications Act or Section 21.29(h) of the Commission's rules and regulations in relation to Station KIK 578.

7. Neither Charles P. B. Pinson, Inc. nor Charles P. B. Pinson has been found, by competent authority, to have violated any Federal statute relating to income tax or pertaining to wages and hours of employees.

8. On the basis of the evidence adduced on all of the issues pertaining to Charles P. B. Pinson, Inc. in this consolidated proceeding,

there are insufficient grounds to disqualify said corporation for reasons, other than technical qualifications, from being a licensee in said service.

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9. In the light of the evidence adduced on the issues embraced within the Commission's order pertaining to Charles P. B. Pinson, Inc., the public interest, convenience and necessity would be served by a grant of the renewal application of said corporation.

Respectfully submitted,

Charles P. B. Pinson, Inc.

James C. Fields

By /s/ Mayer U. Newfield,
Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Proposed Findings of Fact and Conclusions of Law by mailing a copy, postage prepaid, to the following:

Hon. Forest L. McClenning
Hearing Examiner, Room 6511
Federal Communications Commission
Washington 25, D. C.

Lawrence M. De Vore, Esq.
Federal Communications Commission
Washington 25, D. C.

Samuel Miller, Esq.
Mark E. Fields, Esq.
501 Washington Building
Washington 5, D. C.

Dated at Birmingham, Alabama this 18th day of July, 1961.

/s/ Mayer U. Newfield

* * * *

INITIAL DECISION OF HEARING EXAMINER FOREST L. McCLENNING

Preliminary Statement

1. By orders released June 6, 1960 the Commission designated the above-entitled applications for facilities in the Domestic Public Land Mobile Radio Service for hearing in a consolidated proceeding. By its applications Charles P. B. Pinson, Inc. (hereinafter also referred to as Pinson, Inc.) seeks: (a) renewal of the license for two-way station KIG289 St. Petersburg, Florida ^{1/}; (b) renewal of the license for one-way station KIG843 St. Petersburg, Florida ^{2/}; (c) renewal of the license for two-way station KIB386 Tampa, Florida; (d) authority to change the transmitter locations of stations KIG289 and KIG843 and change antennas; (e) modification of construction permit for two-way station KIN652 Jacksonville, Florida to extend completion date and (f) construction permit for a new one-way station at Clearwater, Florida. By his application James C. Fields seeks renewal of the license for one-way station KIK578 Tampa, Florida. By his application Alan H. Rosenson seeks modification of construction permit for one-way station KIQ516 to change frequency from 43.22 megacycles to 35.22 megacycles. The order designating the applications of Charles P. B. Pinson, Inc. for hearing specifies the following issues:

- (1) To determine Charles P. B. Pinson, Inc.'s technical and character qualifications to be a licensee in this service.
- (2) To determine whether the statement made to the Commission under oath on March 17, 1958 by Charles P. B. Pinson, President of Charles P. B. Pinson, Inc., relative to the operation of station KIK578 was true and correct when made.

^{1/} Two-way station is used to indicate a facility where both the base station and mobile units transmit and receive messages.

^{2/} One-way station is used to designate a facility where the base

station transmits code or voice messages for receipt by the associated mobile units. The service is commonly referred to as "one-way paging" or "pocket paging."

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(3) to determine, in the event the statement mentioned in issue 2 above is found to be untrue in any respect, whether such untrue statement was made with intent to mislead and misinform the Commission.

(4) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have made false and misleading representations to the Commission and its representatives relevant and material to the grant of radio authorizations for station KIK578 and material and relevant to the use and operation of such station.

(5) To determine the basis for, and the extent of, the participation of Charles P. B. Pinson, Inc. or Charles P. B. Pinson in the control and operation of station KIK578 and to determine the legal, financial and other relationships heretofore and presently existing between Charles P. B. Pinson, Inc. or Charles P. B. Pinson, on the one hand, and James C. Fields, licensee of record of station KIK578 at Tampa, Florida, on the other hand.

(6) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have violated the provisions of Section 310(b) of the Communications Act and Section 21.29(h) of our rules in relation to station KIK578.

(7) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have been found, by competent authority, to have violated any Federal statute relating to income tax or pertaining to wages and hours of their employees.

(8) To determine, on the basis of the evidence adduced on all of the above issues, whether Charles P. B. Pinson, Inc. should be disqualified for reasons, other than technical qualifications, from

being a licensee in this service.

(9) To determine, in the light of the evidence adduced on the foregoing issues, whether the public interest, convenience or necessity would be served by a grant of the captioned applications.

The order designating the applications of James C. Fields and of Alan H. Rosenson for hearing specifies the following issues:

- (a) To determine James C. Fields' technical and character qualifications to be a licensee in this service.
- (b) To determine whether the statement made to the Commission, under oath, on March 17, 1958 by Charles P. B. Pinson, President of Charles P. B. Pinson, Inc., relative to the operation of station KIK578, was true and correct when made and whether Fields was cognizant of such statement.

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- (c) To determine, in the event the statement mentioned in issue (b) above is found to be untrue in any respect, whether such untrue statement was made with intent to mislead and misinform the Commission, and whether Fields was cognizant thereof.
- (d) To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have made false and misleading representations to the Commission and its representatives relevant and material to the grant of radio authorizations for station KIK578 and material and relevant to the use and operation of such station, and whether Fields was cognizant thereof.
- (e) To determine whether the statement made to the Commission, under oath, on March 17, 1958 by James C. Fields, relative to the operation of station KIK578, was true and correct when made.
- (f) To determine, in the event the statement mentioned in issue (e) above is found to be untrue in any respect, whether such untrue

statement was made with intent to mislead and misinform the Commission.

(g) To determine whether James C. Fields has made false and misleading representations to the Commission and its representatives relevant and material to the grant of radio authorizations for station KIK578 and material and relevant to the use and operation of such station.

(h) To determine the basis for, and the extent of, the participation of Charles P. B. Pinson, Inc. or Charles P. B. Pinson in the control and operation of station KIK578 and to determine the legal, financial and other relationships heretofore and presently existing between Charles P. B. Pinson, Inc. or Charles P. B. Pinson, on the one hand, and James C. Fields, licensee of record of station KIK578 at Tampa, Florida, on the other hand.

(i) To determine whether James C. Fields has violated the provisions of Section 310(b) of the Communications Act of 1934, as amended, and Section 21.29(h) of our rules in relation to station KIK578.

(j) To determine, on the basis of the evidence adduced on all of the above issues, whether James C. Fields should be disqualified for reasons, other than technical qualifications, from being a licensee in this service.

(k) To determine, on a comparative basis, the nature and extent of service now provided by station KIK578 in Tampa, including the rates, charges, practices, classifications, regulations, and facilities pertaining thereto.

(l) To determine, on a comparative basis, the nature and extent of service proposed by Alan H. Rosenson in Tampa, including the rates, charges, practices, classifications, regulations and facilities pertaining thereto.

- (m) To determine the area and population presently covered by station KIK578 in Tampa.
- (n) To determine the area and population to be covered by Rosenson's proposed station in Tampa.
- (o) To determine the nature and extent of the need of the public for service of the kind proposed by Rosenson and Fields, respectively.
- (p) To determine, on the basis of the engineering standards relative to the 43 dbu contour, as set forth above, whether any harmful interference would result from the simultaneous co-channel operations on the frequency 35.22 Mc by stations KIK578 and KIQ516 at Tampa, and, if so, in view of the nature of the service proposed, whether such service would be undesirable or intolerable.
- (q) To determine the reasons for which Alan H. Rosenson seeks to modify the construction permit for station KIQ516 to change the authorized frequency of his proposed station from 43.22 Mc to 35.22 Mc.
- (r) To determine, in the light of the evidence adduced on the foregoing issues, whether the public interest, convenience or necessity would be better served by (1) a grant or a denial of the renewal of license application for station KIK578; (2) a grant or a denial of the application to modify the construction permit for station KIQ516.

2. A prehearing conference was held on November 16, 1960. Hearing was held on the dates of February 20, 21, 23, 24, 27, and 28, March 2, 3, 6, 7, 8, April 20, 21, June 29 and 30, 1961. The record was closed on April 21, reopened upon motion therefor by order of June 5, and again closed on June 30, 1961. Proposed findings of fact and conclusions of law were filed by all parties on or before the specified date of July 20, 1961, Charles P. B. Pinson, Inc. and James C. Fields filing jointly. Reply findings were filed on August 3, 1961 by the Chief, Common Carrier Bureau.

FINDINGS OF FACTCharles P. B. Pinson, Inc.

3. Charles P. B. Pinson, Inc. is a Florida corporation wholly owned by Charles P. B. Pinson. He is president and a director of the corporation and holds a third-class radio operator license. Mr. Pinson has a B.A. degree in political science from the University of Michigan, and attended the University

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of Michigan Law School for two years. Pinson, Inc. initially engaged in the building and sale of homes. It entered the Domestic Public Land Mobile Radio Service briefly in 1953 at St. Petersburg, Florida when it purchased and operated for several months a two-way station. The station was transferred to the Peninsula Telephone Company which subsequently closed the St. Petersburg operation in favor of a Tampa operation. Because of discontinuance of this service Pinson, Inc. filed for and received a construction permit for two-way station KIG289 at St. Petersburg.

4. On July 1, 1955 Pinson, Inc. opened a telephone answering service in St. Petersburg and on July 29, 1955 filed applications for new one-way stations in St. Petersburg and Tampa, Florida to operate on the frequencies 35.58 and 43.58 megacycles, respectively. Counsel for Pinson, Inc. was thereafter informally advised that the Commission was unwilling to grant both applications without an evidentiary showing that they could not be operated co-channel as the two frequencies sought were the only frequencies then available for this service. Possible methods of co-channel operation were suggested. By letter of Pinson, Inc. dated October 17, 1955 dismissal of the Tampa application was requested. This request was granted and on October 24, 1955 the application for construction permit for station KIG843 was granted. ^{3/}

5. In the latter part of 1956 Pinson, Inc. decided to open a telephone answering service in Clearwater, Florida and did open its Clearwater office in July of 1957. An informal application was then executed

to install a directional antenna at station KIG843 designed to project the signal toward Clearwater, Florida. This application as amended was granted on September 26, 1956. The application was executed by Charles P. B. Pinson and the following is stated therein:

This directional antenna will not impair the service to St. Petersburg area nor will it appreciably impair the service in the area of Tampa, Florida, since reliable service is not available to Tampa at the present time.

This modification did improve service in the Clearwater area and as a consequence Mr. Pinson considered installation of a rotating directional antenna to serve alternately the cities of Clearwater and Tampa from station KIG843. This was discussed with members of the Commission's staff in the fall of 1956 and Mr. Pinson was advised such installation could not be authorized under the Commission's Rules. Mr. Pinson testified that because of the Clearwater financial commitments and being involved in the protest of the grant for station KIJ357, Docket No. 11971 (referred to herein as the "Moon hearing")

3/ Basically, it is the Bureau's and Mr. Rosenson's position that thereafter Pinson, Inc. conceived and effectuated a plan whereby Pinson, Inc. secured one-way paging stations on separate frequencies in St. Petersburg and Tampa, Florida without an evidentiary showing that they could not be operated co-channel.

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he was not in the fall of 1956 interested in opening a Tampa facility, and further, that Pinson, Inc. was still primarily in the construction business at this time. In the latter part of 1957, however, Pinson, Inc. did acquire two-way station KIB386 in that city from Mr. Joseph H. Wofford.

6. Mr. Pinson's first contact with Mr. Wofford, owner and operator of Tampa Radio Dispatch Service and licensee of station KIB386, relative to purchase of this station was by telephone in the summer of

1956. Mr. Wofford at that time informed him he had no interest in selling. Mr. Wofford later decided to sell and Mr. Pinson became aware of this fact. Mr. James C. Fields, the father-in-law of Mr. Pinson and at that time applicant for station KIK578, testified that he learned of Mr. Wofford's desire to sell and suggested that Mr. Pinson purchase the station, open a telephone answering service, and operate Mr. Fields' proposed station under contract. Mr. Pinson testified that he learned Mr. Wofford did want to sell through a man he was visiting and it was thereafter discussed with Mr. Fields at which time Mr. Fields suggested the combined operation. Telephone and correspondence contacts were made between Mr. Pinson and Mr. Wofford prior to the making of a formal written offer. The dates of these contacts are not established by the record, the parties being unable to recall the dates with any degree of accuracy. Mr. Pinson testified that Mr. Wofford was "down here ^{4/} on two or three occasions and wanted to sell it. He wanted too much money for it. I didn't have any interest in it." And that "I had a great deal of conversation with Mr. Wofford about this station. When these were, I don't know . . ." Mr. Wofford could state only that he believed the contacts were between February and May of 1957. The first written offer was a contract dated May 29, 1957, drawn and signed by Mr. Pinson and forwarded to Mr. Wofford in Dallas, Texas with a \$500 check. This contract was rejected by Mr. Wofford. Further negotiations were conducted by telephone and a contract dated June 25, 1957 was then entered into for sale of the station. Copies of both contracts were forwarded to Washington, D.C. counsel for Pinson, Inc. Application for Commission consent to the assignment of license was filed on July 17, 1957. By transmittal letter dated October 21, 1957 counsel forwarded to the Commission for filing a copy of the May 29, 1957 contract as the one entered into by the parties. ^{5/} This copy, signed only by Charles P. B. Pinson, was accepted for filing. On October 28, 1957 Commission consent to the assignment was granted and the assignment consummated on December 3, 1957. Telephone Answering Service of Tampa continued acting as contract employee

until February of 1958 at which time Pinson, Inc. opened a telephone answering service in Tampa and took over operation of the station.

4/ Mr. Wofford was not a resident of the Tampa area, the station being operated through Telephone Answering Service of Tampa as contract employee.

5/ The only basic difference in the two contracts is the price to be paid for the station, the first providing for a price of \$4,500 or 85% of original cost price of the equipment transferred, whichever should be the lower, the second providing for a price of \$4,500.

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James C. Fields

7. James C. Fields is a resident of Shore Acres, St. Petersburg, Florida. He is 70 years of age and the father-in-law of Charles P. B. Pinson. At the time of hearing a close friendship existed in addition to the family relationship. Mr. Fields testified that they did fish and play golf together and that an exceptionally close family relationship existed. Mr. Fields served in the United States Navy from 1909 to 1929 and in January of 1943 again entered active duty as a Chief Warrant Officer (radio) serving 27 months in the South Pacific area. From 1929 to 1943 and from 1945 to April 1, 1952, he was employed as an engineer with the Radio Corporation of America, serving initially as a service engineer and later as a sales engineer. He has been retired from RCA since April 1, 1952, but has continued to act as manufacturer's representative for RCA with the Florida Power Company. In 1947 or 1948 Mr. Fields seriously considered entering the "two-way signaling business" in Washington, D.C., but decided it could not be profitably operated due to salary and overhead costs involved in giving 24-hour service. At the time Pinson, Inc. purchased the defunct two-way service in 1943 he advised his son-in-law against such purchase. After dismissal of the application of Pinson, Inc. for a one-way service in Tampa, Mr. Fields testified that he then, however, gave consideration to applying for this

service and consulted with Mr. Pinson to determine whether Pinson, Inc. had objections to such filing. Mr. Pinson explained operation with a contract employee, the opportunity for profit under such operation, the investment required, and limited overhead where operating with a contract employee. Also that Pinson, Inc. had no objection to his filing. On October 3, 1956 Mr. Fields did execute an application for such facility to operate on the frequency 43.58 megacycles. The application was filed with the Commission on January 28, 1957 and granted on July 23, 1957. The application was prepared in the offices of Pinson, Inc. with Mr. Pinson preparing the initial engineering portions and assisting in the preparation of other portions. Subsequently, an engineering consultant was employed to provide additional data. The initial arrangements for this work were made by Mr. Pinson with Mr. Fields subsequently contacting the consulting engineer by telephone. Mr. Fields testified that he personally paid for the engineering service rendered, but could not recall "how much and when and how . . ." Nor could he produce evidence of such fact in the form of a receipt or cancelled check. On August 14, 1957 Pinson, Inc. issued its check number 7361 to the engineering firm employed. The engineer employed testified that he also did consulting work for Pinson, Inc. and had no records showing the service rendered for this fee. The amount of check number 7361 (\$170.60) was admitted by the engineer to approximate what charges for the service to Fields would have been as a "general picture"; that his records did show receipt of this check on August 19, 1957; that the service was billed on July 1, 1957; and that he had no record of receipt of payment from Mr. Fields. His stated belief was, however, that "I don't feel that the check for \$170.60 had anything to do with the Fields' engineering." Mr. Pinson testified that "I haven't to my knowledge paid for any engineering for Mr. Fields." He did not identify any service rendered Pinson, Inc., however, for which check number 7361 was issued.

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8. The application of Mr. Fields did not disclose the family relationship of Mr. Fields and Mr. Pinson. In the original application Mr. Fields represented that he would have absolute control of the station, both as to physical operation and service conducted, and by letter dated May 27, 1957 stated that he intended to manage the station and actively participate in the operation of the station. Application for modification of construction permit to change transmitter location from the First National Bank Building to the Wallace S. Building and change type of transmitter was subsequently filed and granted on February 17, 1958. In this application it was stated that the two buildings are the same height, i.e., 190 feet in height, 15 feet above mean sea level. The station was first licensed on March 4, 1958 as KIK578 with the schedule of charges [tariff] being effective May 16, 1958. Essentially the issues herein as to the character and other qualifications of Pinson, Inc. as represented by its alter ego Charles P. B. Pinson, and of James C. Fields turn on the actions and motives of these parties in filing the various applications for station KIK578, operation of this station, and the representations made to the Commission relative thereto.

9. From inception Mr. Fields intended to operate the station through what is termed a contract employee. ^{6/} He testified that at the time of execution of the application "I had no intention at the time of filing that thing or sending it on, because I had nothing to back up the application at all." Between this date and January 25, 1957 he testified that he did decide to file, having concluded it would be a good investment and being retired it would give him "a little something to do." He also testified that in considering whether to provide space and equipment and everything and put it in and run it directly and completely as an independent thing, ". . . that I threw out the window very quickly;" that for him to go into the business he had to make some arrangement with an existing telephone answering or two-way mobile unit and make an equitable deal with them or he might as well forget it. Further testimony,

however, was that up until the time he found that Mr. Pinson was going into Tampa eventually as a two-way and telephone answering service he had definitely made up his mind it wasn't worth the trouble because of operating expenses, as far as he could determine. And it was not until the "middle of 1957" that he definitely decided to place the station in operation, that the intent to make the investment and operate a station "was not really crystallized" until after he learned that "Charles was going to take Wofford's place here in Tampa." Mr. Fields did not at any time attempt to contact other firms in Tampa looking toward a contract agreement for dispatching service. Mr. Pinson also testified that due to his close association with the application and Mr. Fields, he [Mr. Pinson] knew Mr. Fields anticipated using a contract employee at the time the application was filed. When, however,

6/ Operation under contract with another to do dispatching in this service is neither unlawful nor improper provided it is done under conditions which comply with the applicable statute (Section 310(b) of the Communications Act of 1934, as amended) and the rules and policy of the Commission relative to the maintenance of operation and control by the licensee.

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confronted with his statement in the letter of May 27, 1957, Mr. Fields testified that at that time he meant exactly what the statement said and that the statement did not in any way indicate that he intended to operate the station through a contract employee.

10. Insofar as is reflected by the record, nothing was done toward construction of the station until the latter part of 1957. As the result of discussions with Mr. Pinson at that time an agreement was reached as to construction and operation. A written agreement dated November 4, 1957 was executed under which Pinson, Inc. was to act as agent and employee of Mr. Fields for the station, to furnish operating personnel and office supplies, furnish space and electric current for the transmitter and antenna, and furnish necessary telephone service. Pinson, Inc.

was to receive 50% of the gross message charge for the one-way service of station KIK578. The agreement specifically provided that James C. Fields was to have complete and absolute authority over the station operation and had an absolute right of entry, access, and control at all times of the station equipment and operating personnel.

11. Mr. Fields thereafter had "very little" to do with placing station KIK578 into operation. Mr. Pinson conducted the negotiations for placement of the antenna on the First National Bank Building, for the change to the Wallace S. Building, and arranged for purchase of necessary equipment. Two transmitters were ordered, one to be used by Pinson, Inc., the other for station KIK578. These were purchased by and billed to Pinson, Inc., monthly payments to commence upon delivery of the second transmitter. At Mr. Fields' direction Mr. Pinson arranged for installation and maintenance of the equipment. The rental agreement for use of the roof of the Wallace S. Building for the station KIK578 antenna is between the rental agent and Pinson, Inc. The station commenced operation after February 1, 1958 and prior to March 10, 1958.

12. The November 4, 1957 agreement was modified by an agreement dated March 13, 1958, which was prior to the time any business was done. The agreement as modified provided that Pinson, Inc., as employee of Fields, was to operate the control point of station KIK578 and furnish qualified operators for this purpose subject to the supervision and control of the employer. It provided that Fields as employer was to furnish and maintain the transmitter and portable receivers for station KIK578 and pay all costs necessary for rendition of service including power, telephone charges and charges for maintenance of the equipment. Pinson, Inc. was to receive 30% of the gross receipts from the operation. Upon commencement of operation, however, and for a period in excess of one year thereafter, the receivers were furnished and maintained by Pinson, Inc. Settlement was made on the basis of Fields receiving 70% of the gross billings for message service, Pinson, Inc. receiving the whole of the receiver charge plus 30% of the message

charge less any uncollected accounts. Tariff for the station provides for a six dollar message charge and four dollar receiver charge monthly. By agreement dated January 3, 1959 the agreement was further amended to pay to Pinson, Inc. 50% of the message charges less any uncollected accounts. Duties and responsibilities were also changed to show that Pinson, Inc. was to render all bills,

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collect the monies due and to make an accounting thereof to Mr. Fields at the end of each six-month period. After April 1, 1959 Pinson, Inc. ceased furnishing the receivers and the \$10 charge was divided evenly. The agreements dated November 4, 1957 and March 13, 1958 were first filed with the Commission as hereinafter noted. The amendment dated January 3, 1959 and the April 1, 1959 change were not disclosed until presented in evidence herein. Throughout the period of operation of the station Mr. Fields has done no selling or soliciting of customers for his one-way service with the exception of one or two of his friends and maintained no records of the operation, relying wholly upon Pinson, Inc. to do this work. Insurance, occupational licenses, and advertising of the installation are handled in combination with those of the Pinson, Inc., services under the Pinson, Inc. name. The personal property tax on the installations is paid by Pinson, Inc. Neither James C. Fields nor Tampa Pocket Phone Paging carries a Tampa telephone listing, the service being listed and advertised under the Pinson, Inc. firm name and number. Payment for telephone services is made by a single check. ^{7/} Delinquent accounts are collected by Pinson, Inc. Mr. Fields does not maintain a business office and had no knowledge of the number of customers discontinuing the service or of reasons therefor.

13. After commencement of operation of Station KIK578 the Commission received complaints from members of the public in the Tampa area stating that the station was creating interference to television reception. Incidental to such complaints the association of Pinson, Inc.

with the station was indicated. Commission records were checked and it was noted that the control point of stations KIK578 and KIB386 were at the same location. On March 10, 1958 the Commission sent a telegram to Mr. Fields advising that, pursuant to Section 1.16 of the Rules, the grant of the license for station KIK578 was reconsidered and ordered that operation of the station be terminated immediately. Upon receipt of this telegram Mr. Fields did immediately call by telephone from his home and order the station off the air. He then contacted Mr. Pinson in St. Petersburg and the latter drove to Tampa to verify that the station had ceased operating. By letter of March 12, 1958 the Commission confirmed the telegram and, inter alia, requested information as to the relationship of Fields to Pinson and the manner in which Fields as licensee exercised control over the station. On this same date Mr. Pinson called the Commission by telephone and spoke to Mr. Gladstone of the Commission's staff concerning rescission of the license. With the agreement of Mr. Pinson, Mr. Palik of the Commission's staff participated in the call. In the ensuing conversation Mr. Pinson disclosed the family relationship between himself and Mr. Fields and was informed of the necessity for establishing that the arrangement between himself and Mr. Fields was a bona fide transaction in behalf of Mr. Fields, particularly in view of the past efforts of Mr. Pinson to establish one-way services in both St. Petersburg and Tampa and the questions raised relative thereto by the Commission. In response to his inquiry as to factors tending to establish this fact, he was advised that Mr. Fields should furnish all money required for investment and operating expenses of his station; that billing, advertising

7/ Pocket phone paging was carried in the Tampa telephone directory display advertising of "Auto Phone Exchange" for the years 1959, 1960 and 1961.

soliciting, collecting of accounts and other relations with the public be

in Fields' name; and that there be no intermixture of their separate operations apart from actual dispatching or clerical routine to be performed by Pinson, Inc.'s employees for Mr. Fields. Mr. Pinson stated that these things were being done.

14. On March 18, 1958 Mr. Pinson came to the Commissions' offices in Washington, D. C., stated that Mr. Fields was ill, and submitted for filing, in response to specific inquiries in the Commission letter of March 12, 1958, the sworn statements of each dated March 17, 1958 with attachments, all of which were placed in evidence in this proceeding as Pinson, Inc. Exhibits 1 and 2. Mr. Pinson also had with him the original of a ledger sheet showing cash receipts of Pinson, Inc. from March 12 to March 17, 1958 and identified as sheet No. 145. This ledger sheet showed receipt on March 12, 1958 of the sum of \$741.77 from Mr. Fields. An obvious erasure appeared on this entry. In the meantime, under the Commission's Rules, additional frequencies had been made available for the one-way service and Mr. Pinson simultaneously submitted for filing with the aforesaid documents an application to change the frequency of station KIK578. Pinson, Inc. paid to Hills Travel Service the plane fare for this trip and \$50 expense money to Mr. Pinson, Mr. Pinson testifying it was his feeling that if Mr. Fields had contracted with any one other than Pinson, Inc. he would not have experienced this difficulty with the Commission; "and therefore the responsibility resolved on myself and my corporation."

15. Among the documents contained in Pinson Exhibits 1 and 2 are a conditional sales contract dated March 3, 1958 evidencing a sale of the transmitter for station KIK578 by Pinson, Inc. to Fields and a check dated March 3, 1958 from Fields to Pinson, Inc. in the amount of \$741.77. Mr. Fields and Mr. Pinson testified that the check was delivered on this same date, probably in Mr. Pinson's office or in any event no later than March 4, 1958.^{8/} The check shows that it was deposited to the account of Pinson, Inc. on March 12, 1958. Mr. Pinson stated the delay in depositing the check was not unusual as it was the practice in his business to put checks received into a cigar box and to

accumulate receipts in this fashion until someone in the office found it convenient to take the accumulation to the bank for deposit and no deposits had been made between these dates. ^{9/} Evidence shows, however, that deposits were made to the account of Pinson, Inc. on the dates of March 4,

^{8/} Neither Mr. Pinson nor Mr. Fields recalled whether the check was delivered in person by Mr. Fields or by mail.

^{9/} Commission witnesses testified that Mr. Pinson stated the reason for the lapse of time between the date of receipt of the check and its deposit was that no deposits had been made between those dates. Mr. Pinson denied this statement. He, however, remembered being questioned about this matter and testified that he did not remember "specifically what I told him, sir, though I think I explained various letters." The Commission witnesses testimony on this point is clear and unequivocal and is accepted.

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March 6, March 7, March 10, March 11, and March 12, 1958. ^{10/} The first item recorded on the deposit slip of March 12, 1958 is the sum of \$741.77 noted "James C. Fields." Evidence also shows that in at least two instances Pinson, Inc. had held telephone company refund checks before attempting to deposit them beyond the period they would be honored. One check was in the amount of \$72, the other in the amount of \$26.70. ^{11/} Mr. Pinson testified there had been others, stating the reason was the procedures for handling checks not received in the normal course of business had never been established. Consequently, when such checks were received, they sometimes were laid aside for his attention. Evidence was also adduced showing a number of periods of nine days or more between bank deposits of Pinson, Inc. The statement of Mr. Fields contained in said document shows that steps were taken to find ways to eliminate the television interference created by station KIK578. These included attendance of a meeting by Mr. Pinson of the "TV and Radio Association of Tampa Bay" in an attempt to work out the problem and discussion of the problem by Mr. Pinson with a member

of the Commission's Field Engineering and Monitoring Bureau. Both Mr. Pinson's and Mr. Fields' statements assert that the Fields' application was filed only after Pinson, Inc. had given up the idea of opening a one-way service in Tampa, it having filed for a similar facility in Clearwater, Florida where it also planned to open a telephone answering service and also having become involved in a protest hearing before the Commission on the application of one Mr. Moon. Mr. Fields also asserted by his statement that at the time of filing he planned to operate with a contract employee because of operating costs, that he suggested to Mr. Pinson about June or July of 1957 that he [Pinson] purchase an existing two-way service in Tampa, open a telephone answering service in connection therewith, and operate the one-way service under contract. Copies of the November 4, 1957 and March 13, 1958 contract agreements between Pinson, Inc. and James C. Fields (see paragraphs 10 and 12, supra) were submitted among the attachments. In reliance upon the representations made, the application for change of frequency of station KIK578 (File No. 2091-C1-58) was granted on March 18, 1958.

16. Pinson, Inc. subsequently became involved in a competitive application situation involving its application for a one-way signaling facility at Lakeland, Florida and the application of Alan H. Rosenson for a similar facility in Tampa. ^{12/} Notification of the apparent necessity for hearing under the then applicable provisions of Section 309(b) of the

^{10/} The dates of March 8 and 9, 1958 fell on Saturday and Sunday, respectively, days on which banks normally are not open for business.

^{11/} In these instances, the amount of the refund was deducted from subsequent bills rather than being refunded through banking channels and the checks were therefore still in the possession of Pinson, Inc.

^{12/} The application of Pinson, Inc. was subsequently dismissed at the request of the applicant and that of Rosenson granted.

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Communications Act was given. Counsel for Rosenson thereafter appraised members of the Commission's staff of matters indicating that station KIK578 was in reality being conducted by and in the name of Pinson, Inc. Accordingly an informal investigation was made in March and April of 1959, including a check of the records of the common carrier operations of Pinson, Inc. and interviews with Mr. Pinson, Mr. Fields, certain employees of Pinson, Inc., and the public accountant whose services were used by both Pinson, Inc. and Mr. Fields. ^{13/}

In the course of one of the interviews with Mr. Pinson and Mr. Fields, Mr. Fields inquired as to corrective actions he might take to demonstrate compliance with statutory requirements and requirements of the Commission's Rules where a contract with another to do dispatching in this service was presented. He was advised that all representations to the public should clearly represent Fields as the owner and operator of the service, e.g., that such fact be displayed on the building, on the directory listing at the building, in advertising, in mailing pieces, and in the phone book, or in any other manner; that the pocket paging in Tampa be conducted in Fields' name; that all billing be done in Fields' name exclusively for such service; that all soliciting of accounts be done in his name and behalf, with the clear representation to the user that Fields, not Pinson, nor any of the latter's entities, is the purveyor of service; that Fields' accounts and books of account relating to his business be separated from those of Pinson; that he control his own funds and maintain such control in his own name; that the participation of Pinson in relationships with subscribers and as lessor of receivers, should be discontinued; that Fields, as licensee, hold himself available to provide receivers to his subscribers; and that Fields undertake some reasonable day-to-day supervision, control and contact with his business in Tampa.

17. Prior to this date bills were rendered to subscribers to the services of station KIK578 in the name of Charles P. B. Pinson, Inc.

This practice was thereafter discontinued and the bills rendered in the name of James C. Fields. The practice of intermixing ledger cards for the Fields' accounts with those of Pinson, Inc. accounts was also discontinued and separate books set up by Pinson, Inc. The pocket receivers owned by Pinson, Inc. were transferred on April 1, 1959 to Mr. Fields at a price of \$40 each including batteries. A total of \$3000 was charged on the books of Pinson, Inc. against Fields for the receivers transferred, to be paid from the proceeds of the one-way service. The price of \$40 per receiver was approximately the original cost plus battery cost to Pinson, Inc. for the receivers when new. Pinson, Inc. continued furnishing repair service on the receivers at its St. Petersburg office, allegedly at Mr. Fields' expense. Batteries for the receivers were allegedly sold to Mr. Fields by

13/ Issue was taken in the hearing and in the proposed findings of fact submitted by both the Chief, Common Carrier Bureau and by Pinson, Inc. as to the manner of conducting the investigation. None of the matters presented shows either improper or prejudicial action on the part of the Commission's investigators or of those interviewed and accordingly they are deemed of no materiality.

Pinson, Inc.^{14/} "Pocket Phone Paging" appeared on the windows of the Tampa office and the name James C. Fields was added to this. Signs were painted on the doors of the Tampa office showing "Pocket Phone Paging, James C. Fields." Mr. Pinson contracted for and paid for the painting of these signs. Mr. Fields testified that he reimbursed Mr. Pinson by cash for the painting of these signs. Funds from the operation continued to be co-mingled with those of Pinson, Inc. until February of 1961. At that time Pinson, Inc. established an escrow account for these funds in which, however, \$500 of Pinson, Inc. money was also deposited. Funds can be withdrawn from the account only by Pinson, Inc.

18. Since its establishment there has been a notice on the directory

board of the Wallace S. Building that Mr. Fields is owner of the one-way paging system and a notice on the bulletin board of the paging station stating "Mr. James C. Fields, the owner of the paging system, is admitted to the office at any time and his instructions on the paging system carried out to the letter." He has never maintained independent records of the operation or has he made an audit of or checked the books maintained by Pinson, Inc. Pinson, Inc. prepares the Form L reports filed with the Commission for station KIK578 from its records.

19. Relative to his control of station KIK578 Mr. Fields testified that prior to the investigation he "had pretty much lost interest in the thing and was perfectly satisfied to have Mr. Pinson operate it under contract and if he made any money out of it, that was fine and if he didn't make any money out of it, it still was all right. I wasn't at all concerned about it." Mr. Fields apparently also had no interest in operation of the station after the matter of the television interference arose and the original questioning by the Commission's staff testifying that "after the station went back on the air I was pretty sick of the whole thing and I didn't do anything about it. I was sorry I went into it and since I have a contract with Mr. Pinson to operate the thing I was perfectly content to let him go ahead and operate it." For the next several months after the investigation in 1959 Mr. Fields made "two, three, four trips" to Tampa to check on the actual operation of the station. He testified this was done "until it reached a point where I made up my mind that 'this is silly' it is causing me a great deal of inconvenience and I have a contract for Mr. Pinson to do this work, and, instead of me trying to establish an operation by myself in addition to the contractual obligation, I am going to let it go, I am going to stand on that contract. And, so, I took an extended motor trip, was gone for quite a while, and since that time very rarely have I come to Tampa."

14/ Accounting statements between Pinson, Inc. and James C. Fields were not submitted in evidence nor does the record otherwise reflect the nature of the expenses actually charged by Pinson, Inc. to operation

of station KIK578. These records were, however, made available to Commission counsel during the course of the hearing.

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20. The check dated March 3, 1958 ^{15/} in the amount of \$741.77 is the only cash investment specifically shown to have been made by Mr. Fields in station KIK578 although Mr. Fields testified that he had a total of approximately \$1000 cash investment in the station. This check to Pinson, Inc. covered a down payment on the transmitter, transportation and installation costs for the station, cost of the antenna, and several miscellaneous items. Total cost of the transmitter, and the amount of the down payment and monthly payments thereon were computed on the basis of one-half of the costs billed by the manufacturer to Pinson, Inc. for the two transmitters noted supra. Pinson, Inc. made the payments to the manufacturer. Payments on the transmitter, payments on the receivers transferred to Mr. Fields in April of 1959, and such other costs as have been charged to Mr. Fields in the operation of station KIK578 have been charged to and deducted by Pinson, Inc. from receipts owing Mr. Fields under the aforesaid agreements. Mr. Fields first reflected his investment in station KIK578 and the income therefrom in the filing of his Federal Income Tax forms in the return filed in April of 1960 for income earned during the calendar year 1959. The failure to show the station in his 1958 return was testified to have been due to the fact that the first accounting settlement for the operation was made on January 7, 1959. The ledger card of Pinson, Inc. re this account reflected the sum of \$2246.65 due Mr. Fields from 1958 operations. In settlement Mr. Fields was credited with payment of the balance of \$1201.33 owed on the transmitter, was charged with expenses of \$489.91 and received a check in the amount of \$555.41. He was later charged with an overpayment in the amount of \$149.77 ^{16/} arising as a consequence of computing the percentage due Pinson, Inc. at 25 percent rather than 30 percent. Net income to Mr. Fields during 1959 was \$1268.93. At the end of 1959 Mr. Fields owed Pinson, Inc. the sum

of \$230.84 which was carried over into 1960. At the end of 1960 Mr. Fields owed Pinson, Inc. the sum of \$994.89. This deficit was carried over to 1961. The deficits assertedly arose from transfer of the receivers from Pinson, Inc. to Mr. Fields.

21. In explanation of the purchase of the station KIK578 transmitter by Pinson, Inc. it was testified that purchase of two transmitters resulted in a reduction in price and shipping costs to both Pinson, Inc. and Mr. Fields. Also, due to the later delivery date for the Tampa installation commencement of monthly payments on the account was deferred. Joint liability insurance coverage for stations KIK578 and KIB386 was taken by amendment of the Pinson, Inc. policy without additional premium costs, the same premises being covered. Licensees assert that separate occupational licenses are not required for the installations, that those issued to Pinson, Inc. for its

15/ Mr. Fields does not always issue his checks in numerical sequence. Examination of the checks issued by him in March of 1958 accordingly failed to prove or disprove the accuracy of the date of issuance.

16/ The transcript shows that Mr. Pinson testified this figure was \$149.85 and the check was \$555.51. (T720) Also at page 726 of the transcript the figure \$1221.33 is shown as the balance due on the transmitter and \$2246.15 as the amount due Mr. Fields. These minor differences are of no materiality and Mr. Fields' figures have been accepted.

telephone and dispatching operations also cover the one-way service. 17/ Mr. Pinson testified that the rental arrangements for use of the roof of the First National Bank Building and later for that of the Wallace S. Building for the antenna of station KIK578 were conducted by him as he had existing tenancies with the rental agent and that generally such rentals are not open to all applicants. The joint equipment service agreement for stations KIK578 and KIB386 was made as in that manner 24-hour service could be secured for station KIK578 at a cost of only \$17.50 per month.

22. On October 20, 1956 Pinson, Inc. addressed a letter to Otis Elevator Company in Tampa stating "Pocket Phone Service will be available in the city of Tampa on or about January 15th 1957. We can provide you with Answering Service in the city of Tampa using one of our Tampa numbers . . . We can provide this service immediately and will be able to provide you with Pocket Service about the 15th of January, so that your Tampa Office operation will be then identical with your St. Petersburg one." Mr. Pinson testified that the January 15, 1957 date had reference to the length of time it would take for publication of the revised Tampa telephone directory in which a "no answer" listing^{18/} would be required before the service would be of value as the number to be listed would be a leased line service subscribed to by Pinson, Inc.; that the pocket paging was to be furnished from St. Petersburg station KIG843 as Pinson, Inc. was at that time experimenting to determine the coverage of that station;^{19/} and what the letter was suggesting was that Otis Elevator Company give its order then to afford time to take care of the telephone listing.

23. In December 1957 and January 1958, Mr. Pinson sent out a solicitation on the letterhead of the Physician's Telephone Exchange Division of Charles P. B. Pinson, Inc., which states, in part, "We are planning on

^{17/} The Chief, Common Carrier Bureau urges that under the applicable City of Tampa ordinance (City of Tampa Code 1953, Chapter 21) separate licenses are required. Mr. Pinson testified that city licensing officials regularly visit the offices of Pinson, Inc. in the various cities, make inquiry as to the firms doing business there and give notice of those that need licenses posted. Notice had never been given that a separate license was required for Mr. Fields' operation. This is not a matter which would warrant Commission determination, being properly a matter for determination by local authorities. W. Gordon Allen (KTIX), 13 RR 1120. It accordingly will not be considered further herein.

^{18/} This term was used to describe a listing in the telephone directory which gives under the address and telephone number assigned to a sub-

scriber a second listing stating "If no answer call" followed by another number.

19/ As set forth in the findings of fact of the Chief, Common Carrier Bureau, this statement directly conflicts with the representation on the application to install a directional antenna quoted in paragraph 5, supra. Also as of this date the Fields' application had been executed although not yet filed. It also, however, is within the period Pinson, Inc. was giving consideration to use of a rotating directional antenna as noted in paragraph 5, supra.

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opening a Tampa Physician's Telephone Exchange . . . We offer four services: . . .

"D. Pocket Phone Service. A small radio receiver which weighs 9 ounces is provided for you, an account number is given you and when the Exchange has a call for you, this number is broadcast once a minute until you call the Exchange. The number is then removed from the Air. Thus, you always know when you have a call and more important when you don't have a call. The cost of Pocket Phone "is only \$10.00 per month and telephone answering service is charged for at 1/2 rate where you have Pocket Phone Service."

Other Matters

24. Evidence herein also discloses certain matters in the operation of the Pinson, Inc. and Fields stations inconsistent with the applicable tariffs. During the period Pinson, Inc. furnished receivers for station KIK578, Otis Elevator Company paid an "insurance" fee of \$3.00 per month under which Pinson, Inc. agreed to replace any receivers damaged due to negligence. The applicable tariff of station KIK578 makes no provision for such charge. A combined lower rate was offered to Tampa subscribers to both the telephone answering service of Pinson, Inc. and the one-way paging service of Fields as demonstrated by the advertisement quoted in paragraph 23, supra. The tariff of station KIK578 makes no provision for this combined rate. Through St. Petersburg station

KIG289 Pinson, Inc. offers, through a recording device, through service into the landline telephone exchange system. The tariff applicable to this station does not provide for such service. Free communication service was rendered by station KIK578 during the period of March to May 1, 1958 when billing for service began and service was billed for the period between May 1 and May 16, 1958 which was prior to the date of filing the schedule of charges [tariff] pursuant to the requirements of Section 203 of the Communications Act of 1934, as amended. ^{20/}

^{20/} Counsel for the Commission attempted to show through affidavit of the engineer in charge of District 7, Federal Communications Commission that no record appears in the Commission's file that notice was given of commencement of equipment tests or commencement of service tests for station KIK578, pursuant to the provisions of Section 21.212 of the Commission's Rules. This affidavit was rejected on the ground that such certification would have to be by the official custodian of the Commission's files, i.e., the Secretary of the Commission, before being admissible in evidence. The request of counsel that official notice of such fact be taken through the medium of a personal search of the Commission's files by the Hearing Examiner was also rejected.

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25. Pinson, Inc. has at no time collected or remitted the Federal excise tax on the one-way signalling service accounts in St. Petersburg and Tampa, Florida pursuant to the provisions of Section 4251 of the Internal Revenue Code of 1954 and Revenue Ruling 56-390 or Section 4251 as amended by Public Law 85-859. Mr. Pinson testified that he had been advised by a representative of the Bureau of Internal Revenue that such tax was not applicable to the paging service. He could not identify the individual allegedly giving this advice. Neither Charles P. B. Pinson nor Pinson, Inc. has been found by competent authority to have violated any Federal Statute relating to income tax. By Civil Action No. 366 filed on June 29, 1959 in the United States District Court For the Southern District of Florida, Tampa Division, the United States Department of Labor brought action to enjoin and restrain Pinson, Inc.

and Charles P. B. Pinson individually against further violation of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.). By waiver filed March 28, 1960 Charles P. B. Pinson individually and in his corporate capacity consented to the entry of final judgment granting the relief prayed for. On the same date judgment was entered.

26. Pinson, Inc. represented to the Commission in a letter dated March 30, 1960 that it was having its books audited and would forward a balance sheet for the 1959 Form L report immediately upon it becoming available. Evidence shows that Charles J. McGee, a licensed accountant, did prepare the tax returns of Pinson, Inc. for the fiscal year ending November 30, 1959. The returns were delivered to Pinson, Inc. no later than March 15, 1960. No further audit was made and the balance sheet ultimately submitted was prepared by Mr. Pinson with Mr. McGee's assistance from data contained in the tax return forms. This data was accordingly available to Pinson, Inc. at the time the March 30, 1960 letter was addressed to the Commission.

27. On February 18, 1961 Mr. Frank Palik of the Commission's staff checked Station KIK578 and noted that the radiating antenna was placed at an angle of 15 to 20 degrees from the vertical. The antenna was mounted on a supporting mast approximately two feet long which had previously broken from the mounting and had been wired to the iron ladder going to the pent-house roof. The angle of the antenna could result in reduced coverage in the direction of the tilt. Such reduction if present would, however, be noticeable only at the extreme range of the coverage area. During this inspection it was also noted readings of the power amplifier plate meter and power amplifier current meter indicated that the station was operating with less than its authorized power and below the 25 percent tolerance permissible under Section 21.107 of the Commission's Rules. There is no evidence indicating that either the licensee or Pinson, Inc. was aware of the indicated reduction in power nor was the condition called to its attention at the time of the inspection.

28. On February 21, 1961 Mr. Palik made measurements of the height of the Wallace S. Building (a twelve-story building) which show that the building is 150 feet in height from the sidewalk to the top of the

building wall. The building wall is one foot 10 inches higher than the roof top. Radiation center of the antenna then installed was 186.5 feet above mean sea level.

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As noted supra (paragraph 8) the application for change of transmitter location for station KIK578 represented the antenna installation to be the same as that proposed for the First National Bank Building (a 15-story building), i.e., (a) 190 feet above ground level, (b) antenna height of 223.4 feet above mean sea level, (c) radiation center 215 feet above mean sea level and (d) that the antenna was not more than 20 feet above a man-made structure. The difference in antenna heights from the authorized heights would result in a reduction on the order of 15% to 20% in square mile coverage area.

29. In rebuttal to the Palik measurements, there was presented in evidence as James C. Fields Exhibit 6 a certified sketch of a vertical section of the Wallace S. Building prepared by and under the supervision of Bob L. Heidt, a registered engineer employed in the office of R. G. Merrin. Lloyd K. Fredlund and Thomas Pawson, also employees of R. G. Merrin, made the basic measurements used by Mr. Heidt in preparation of this sketch. The services were paid for by Mr. Fields. When first offered through Mr. Pinson the exhibit was rejected on the ground that it could not properly be admitted in the absence of a witness competent to identify and testify to the truth of the matters contained therein. Mr. Pinson thereafter resumed the stand and testified that he personally participated in the making of the measurements of the building. Upon a showing of Mr. Pinson's qualifications in construction engineering and drafting, he qualified the exhibit and it was admitted in evidence. He testified that the measurements were made on the dates of March 6, 7 and 8, 1961, and he "went through all these measurements on the site . . ." That "We sent a man down to the sidewalk to the rear of the building, . . . We then weighted the steel tape and lowered it

down the side of the building. I measured the building from the apron immediately adjacent to the west of the building -- to the top of the parapet wall;" and that "I stayed up on the roof and I held the top of the tape at the top of the building . . . placed the zero end of the tape, on the apron . . ." Further testimony was that he personally participated in measuring (a) the height of the penthouse on the roof; (b) the height of what Mr. Pinson described as a "structural steel mast" being of "massive steel construction" and having "massive supporting structures coming off it at an angle. . .;" (c) the height of the tip of the station KIK578 antenna; and (d) personally set the transit up at the top of the penthouse and "shot a level" to the top of the coping of the First National Bank Building, and noted a difference of only a little over one foot in height. On the basis of these measurements distance to the top of the ledge or parapet of the Wallace S. Building is 151.03 feet above ground level, to the top of the penthouse 166.65 feet, to the top of the "structural mast" 190.27 feet, and to the top of the antenna 199.57 feet. It is the position of Mr. Pinson that the "structural steel mast" constitutes an integral part of the building and accordingly "The top-mast portion of this building is the top of that structural steel." On the basis of these measurements, it is the position of Mr. Pinson that the responses in the application to change transmitter location relative to overall height and height above the structure of the

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antenna installation were substantially accurate. When asked what the "structural mast" was used for Mr. Pinson responded "I have no idea. . . I have never seen it used for anything." He thereafter stated "Sometimes this type of thing is used as a flagpole, perhaps. But this apparently had some other design, because of its heavy construction and the angled bases of it. Perhaps it was used for lifting heavy motors and other things into the building -- quite an expensive structure, too."

30. Mr. Heidt testified that he was on the roof of the Wallace S. Building with Mr. Pinson and Mr. Fredlund on the date of March 7 at approximately 2:00 p.m. and they remained there for a period between

1/4 and one hour. No measurements were made while he was present, Mr. Pinson showing him what was to be measured. Mr. Heidt described the "structural steel mast" as a flagpole.

31. Mr. Fredlund testified that he was on the roof of the Wallace S. Building from approximately 2:00 p.m. to 5:00 p.m. on March 7, 1961 and from 7:00 a.m. to approximately 2:00 p.m. on March 8, 1961. Further testimony was that Mr. Pinson was present for a period of one hour, "approximately 1:00 till 2:00, " or possibly as much as two hours on the date of March 7 and for two hours "from approximately 11:00 until 1:00," or possibly as long as three hours on the date of March 8.

21/ Mr. Fredlund further testified that he and not Mr. Pinson measured the height of the parapet, that he could not recall if the steel tape used to measure this height was weighted, but due to trouble from the wind blowing the tape, that he recalled "walking to the south corner of the building and started to drop the chain [steel tape] from there so the wind couldn't carry it beyond the obstructions on the north side." He also testified that he made a comparison sighting using a level and determined that the Wallace S. penthouse was 1.25 feet below the top trim block of the First National Bank Building. 22/ Mr. Fredlund further testified that the only measurements he recalled being made by Mr. Pinson were of the antenna support on the penthouse before the new antenna tower was erected and certain measurements of the parts of the antenna before erection. These measurements made in feet and inches, were compared to Mr. Fredlund's measurements made to the tenth of a foot. This occurred "around noon" of March 8. That as to the measurements used in the preparation of Fields' Exhibit 6, Mr. Pinson didn't actually help, "It only took

21/ Hearing in the instant proceeding was in session on the dates of March 7 and 8, 1961. On March 8, 1961 the hearing convened at 9:35 a.m., recessed at 12:40 p.m., resumed at 1:50 p.m., and adjourned at 4:15 p.m. to be reconvened at a later date in Washington, D.C. Mr. Pinson testified during both the morning and afternoon sessions on

this date. Commencing shortly after the starting time, he remained on the stand until the luncheon recess, resumed the stand, was interrupted briefly for another witness and, as reflected by the record (Tr. 1895, 1903, 2346) was present in the hearing room until adjournment.

22/ No comparative sighting of the height of the penthouse, described as an elevator housing, on the First National Bank Building was made. If assumed to be accurate, this measurement has no significance.

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two of us to make the actual measurements and the other man with me helped, that is, Mr. Pawson helped me to make the measurements." He at no time saw Mr. Pinson use the transit. Mr. Fredlund also referred to the "structural steel mast" as a flagpole.

32. Mr. Pawson assisted Mr. Fredlund in making the measurements used by Mr. Heidt in the preparation of Fields' Exhibit 6. He was not at the Wallace S. Building with Mr. Heidt, Mr. Fredlund and Mr. Pinson at the time instructions for the measurements were being given on March 7, 1961. He was, however, at the Wallace S. Building on the date of March 7 from 3:00 p.m. to 4:30 p.m. and on March 8 from 7:00 a.m. to 2:00 p.m. He observed Mr. Pinson being present only on March 8 at which time Mr. Pinson was standing on top of the penthouse. Mr. Pawson held the lower end of the steel rule when the height of the parapet was measured and observed Mr. Fredlund at the other end of the chain upon completion of the measurement. Mr. Pawson testified that when the chain (steel rule) was dropped to him it was not weighted and confirmed the testimony of Mr. Fredlund relative to the difficulty experienced in lowering the chain due to the wind. Mr. Pawson also set up and took the transit sightings from three different points used in determining the height of the "flagpole." He at no time saw Mr. Pinson use the transit.

33. Mr. Palik testified that the "structural steel mast" was an unused flagpole of the approximate height shown in Fields Exhibit 6 surmounted by a ball on top and having a rusty pulley such as is used for a lanyard for hoisting a flag. At the time of his inspection there was no

lanyard in the pulley. Mr. Harrison, also of the Commission's staff, testified that the structure is attached to the building by two angle irons which appear to be three inch angle irons. And that to describe the structure "in simple, lay terms, it is a flagpole."

34. On March 8, 1961 a new antenna was installed for station KIK578. It was this antenna which is included in the above-stated measurement of the R. G. Merrin firm. Prior authorization for this installation pursuant to the provisions of Section 21.109(b) of the Commission's Rules was not sought. Nor was Commission authorization sought or granted for the antenna installation being used at the time of Mr. Palik's measurements. The station KIK578 log book shows that on March 8, 1961 one R. P. Nores of Radio Service, Inc. removed the station from the air at 11:45 a.m., installed the new antenna and returned the station to the air at 1:20 p.m. Frequency, modulation and power measurements of the station and specified transmitter tube replacements are also shown to have been made on this date by Mr. Nores.

Character and Quality of Service Witnesses

35. Witnesses were called to testify to the quality of service rendered by station KIK578. Dr. William A. Moore, an orthopedic surgeon, has been a subscriber to the Tampa telephone answering service of Pinson, Inc. and the paging service of station KIK578 for approximately two years. He has found reception satisfactory within a ten-mile radius of his office.

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Also he has found the efficiency of the operators handling the calls to be "The best of any switchboard I have ever heard." Dr. Moore named other services on which this comparative judgment was based. David Dious, Claude Spangler, Squire Brock, and Joseph W. Daniels -- all engaged in coin machine businesses -- testified to their satisfaction with the KIK578 service. Mr. Bern Brown has found the service satisfactory, but that it has a range of only 8 to 9 miles out in the north area of Tampa. Dr. Roy P. Finney has found the KIK578 service satisfactory.

Otis Elevator Company is a subscriber to the paging service of both stations KIK578 and KIG843. The service of each has been satisfactory.

36. Don Starr and Bill Mitchell testified to a special service provided the St. Petersburg news media by the auto phone service of Pinson, Inc. Arrangements have been made with the St. Petersburg Police Department to call the service in the event of an accident, fire, or other event. The information is then relayed to each of the news service subscribers, either to their car or home, by the auto phone service. This arrangement makes the information immediately available to the various news services and avoids a number of calls coming into the police switchboard. Free telephone answering service is provided by Pinson, Inc. to the Christ Methodist Church in St. Petersburg. Mr. Pinson is not affiliated with this church. An award of merit was given Pinson, Inc. by District 33 of the Florida Nurses Association for providing telephone answering service to that organization without charge in Clearwater, Florida. Because of financial difficulties of the organization and the belief of Mr. Pinson in the importance of its work, arrangements were made whereby the association retained one employee during day hours. The balance of the day Pinson, Inc. provided answering service without charge for a period of two to three years, continuing this service until the Clearwater office was sold. A representative of Benton Company, a marine firm, testified to the satisfaction of this company with the service of Pinson, Inc. and of assistance rendered by it in one instance in effecting rescue of the crew of a sinking tug boat. John Gabrio, an electrical contractor, Burton Lemberg, a general contractor, and W. F. Schnorr, a general contractor, all testified to satisfaction with the services provided by Pinson, Inc.

37. The general character and reputation of Charles P. B. Pinson, Inc., of Charles P. B. Pinson, individually, and of James C. Fields, were shown by the testimony of a number of witnesses. All testified favorably as to general reputation and to the reputation of Mr. Pinson and Mr. Fields for truth and honesty.

James C. Fields' Proposal

38. Predicated upon the presently installed antenna, and an effective radiated power of 224 watts, under the standards specified in the order designating the Fields-Rosenson applications for hearing, the 43 dbu contour of station KIK578 encompasses an area of 290 square miles having a population of 336,714 persons. The coverage area extends out from the transmitter location in a generally circular pattern at distances varying from 10.7 miles to

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the north to 11.9 miles to the south. ^{23/} Voice paging receivers ^{24/} would continue to be used with rates to subscribers remaining at \$10 per month per receiver. There is no regularly maintained personal solicitation for subscribers to the service of station KIK578 and no effort has been made to determine the reason for discontinuance of service. If a receiver needs service or new batteries the subscriber must bring the receiver to the Tampa office of Pinson, Inc. Estimated number of subscribers are 65 to 70. There was no proposal during the initial stages of the instant proceeding to change the arrangement between James C. Fields and Pinson, Inc. in the operation of station KIK578. This arrangement and the background and experience of Mr. Fields have heretofore been fully detailed. Application (FCC Form 702) was, however, tendered for filing with the Commission on June 27, 1961 proposing to transfer the license for station KIK578 from Fields to Pinson, Inc. for a recited consideration of \$10.00 and other good and valuable consideration. This application was not accepted for filing.

Alan H. Rosenson's Proposal

39. Alan H. Rosenson, d/b as All-Florida Communication Company, seeks authorization to modify the construction permit he now holds for station KIQ516 at Tampa, Florida to change the frequency from 43.22 Mc to 35.22 Mc; to replace the originally specified Gates transmitter with a Robert Dollar type 330-A, and to extend the date for

required completion of construction. Station KIQ516 would provide one-way selective signaling. ^{25/}

40. Mr. Rosenson has held, for about 10 years, a first-class radio-telephone license and also holds an advanced class amateur radio license. He holds membership in the Institute of Radio Engineers and is a member of the Professional Group on Vehicular Communications and the Professional Group on Broadcasting of this organization. Mr. Rosenson is the licensee of stations KIN643 and KIN645, two-way and one-way stations,

^{23/} The 180° radial to the south which extends out 11.9 miles, lies wholly over Tampa Bay. The 90° and 315° radials which lie almost wholly over land extend out a distance of 11.3 miles.

^{24/} See footnote 25, infra.

^{25/} In selective signaling service, the subscriber leaves the receiver in an "on" or operating condition at all times when he expects to be called. When there is a call for him, a special signal from the transmitter actuates a tone in his receiver which signals him that there is a call. The subscriber resets his receiver and awaits the next call. There is no voice communication in the signaling operation. The voice page requires that the subscriber turn his receiver on and listen to a cycle of voice messages each time he desires to ascertain if there is a message for him. He does this whenever his discretion dictates such action. A message for him is identified by use of his address code before the message text. Advantages of selective signaling over voice paging are that the subscriber is immediately aware of a call, customer monitoring is eliminated and tape recordings at the transmitter are not required permitting faster service.

respectively, in the Domestic Public Land Mobile Radio Service at Miami, Florida. He prepared all the engineering and other data submitted with his applications for the Miami stations, personally constructed the stations, and since commencement of operation on September 1, 1959 has devoted his full time to operation of the stations. In the Miami operation, Mr. Rosenson has one assistant, Mrs. Jane Vincent, who

is his employee. Bills for the Miami stations are sent out in the name of "All-Florida Communications Company" and a new set of receiver batteries is sent with each monthly bill. Metropolitan Answering Service, Inc., a telephone answering service organization, takes care of the actual dispatching, with Mr. Rosenson or Mrs. Vincent taking care of all other phases of the business. Mr. Rosenson visits the answering service premises two or three times a week and is in daily contact with it by telephone. At his office he also has a 24-hour tape recorder used to make tape recordings of the one-way station to check performance and quality of the service provided and personally or through his employee determines the reason for all disconnects. In addition, he has installed metering and monitoring equipment at the answering service premises for the purpose of checking transmitter performance. A test transmission is made from his office at 7:00 a.m. each day. This permits the making of necessary repairs before 9:00 a.m. when the heavy traffic commences. Revenues from the service are kept in the account of All-Florida Communications Company. When in Miami, Mr. Rosenson does his own servicing and maintenance of the stations, which presently is about 95% of the time. At other times, he has an agreement with Audio-Video Systems, Inc. to perform any needed service.

41. Mr. Rosenson intends to promote the Tampa station in the same manner as is done in Miami, i.e., by salesmen making solicitations, advertising in the County medical bulletin, and advertising in the yellow pages of the phone directory.

42. The Miami one-way station commenced operation with 18 subscribers who made a total of 20 calls a day. It now has about 150 subscribers and the messages run 165 to 170 calls per day. Included among the subscribers are doctors, funeral homes, exterminators, trucking companies, department stores, the County Government, and the U.S. Coast Guard. Mr. Rosenson has collected, and is collecting Federal excise taxes for the one-way communication service at Miami.

43. Mr. Rosenson prepared the engineering for the Tampa application. He originally sought the 43.22 mc frequency for his Tampa station because this was the only frequency available at that time and he felt his personal survey in Tampa indicated a public need for a selective signaling service. Mr. Rosenson had spent time in Tampa over the past several years, and, based on his knowledge of Tampa, the business situation there, and the fact that there was no selective signaling service offered, he felt that Tampa would be a logical place to expand his operations. This application was granted and a construction permit issued on October 1, 1957 after the conflicting application of Pinson, Inc. for a like co-channel facility at Lakeland, Florida had been dismissed. (See paragraph 16, supra.)

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44. Mr. Rosenson was aware, when he first applied for the 43.22 mc frequency, that 43 mc selective receivers were not then available but, due to lengthy conversations with sales officials of the Stromberg-Carlson Company, he was led to believe that such a receiver would be on the market in about one year. After receiving the construction permit, he again discussed the availability of a 43 mc selective signaling receiver and was advised that "they are coming in." In the meantime, Mr. Rosenson tried to convert a 35 mc receiver to 43 mc and did, in fact, convert two such receivers which worked, but not as well or as reliably as on 35 mc. He determined that the transistors used in the receivers were working near their frequency cut-off limit at 35 mc and it was difficult to find a sufficiently "hot" transistor to work at 43 mc. He continued talking with Stromberg-Carlson during this period and they continued only to promise delivery of the 43 mc selective pocket receiver. Thereafter, Mr. Fields' application for renewal of license for station KIK578, which is assigned the 35.22 mc frequency, was filed. Mr. Rosenson was aware that any applicant's facility is open for comparative filing at the time of renewal and was

also aware of the questions raised by the Commission relative to station KIK578 and that such problems might require a hearing on the Fields' renewal application. In addition to the receiver problem he considered the 35.22 mc frequency the more desirable since it would eliminate the television interference problem and it would be co-channel with his Miami station. The latter fact would enable him to stock only one type receiver, simplify service problems and simplify the control of subscriber number assignments. He accordingly filed the captioned application to, among other things, change from the 43.22 mc frequency to the 35.22 mc frequency.

45. The Tampa station would be constructed by Mr. Rosenson personally, or under his supervision, and be operated under his personal supervision in the same manner as in Miami. Initially, he proposes to spend 5 days a week in Tampa and 2 in Miami. Some rearrangement of his time will be made after the period of initial operation. A full-time manager would be employed for the Tampa station and he or she would be directly responsible for the operation when Mr. Rosenson is not in Tampa.

46. The rates for the Tampa facility would be identical with those now in effect at Miami. The basic rates are as follows:

For rental of selective calling pocket receiver for one month and unlimited service:

1st receiver	\$13.64
2nd "	12.73
3rd "	11.82
4th "	10.91
5th "	10.00
6th " and above	9.09

Initial and replacement batteries are provided without additional cost.

47. A call is defined as the transmission of a signal put on the air by the base station to be received by a pocket receiver. At the

customer's option a call may be repeated up to a maximum of three times.

48. Station KIQ516 is proposed to be constructed at Bayshore Drive and Howard Street, Tampa (Lat. $27^{\circ}55'33''$ N. - Long. $82^{\circ}28'57''$ W.). The control point would be the same location as the base station transmitter. The proposed transmitter would have an output power of 250 watts and effective radiated power of 230 watts. The antenna would be an omni-directional Andrew Corporation Type 900-1. The tip of the antenna would be 202 feet above mean sea level. Based on the standards specified in the Commission's order designating the Fields-Rosenson applications for hearing, the 43 dbu service contour of station KIQ516 would encompass an area of 234 square miles having a population of 341,912 persons. The coverage would extend out from the transmitter location in a generally circular pattern at distances varying from 10.2 miles to the northeast (45°) to 11.3 miles to the south and west.

CONCLUSIONS

1. Under the specified issues herein the pertinent provisions of Section 310(b) of the Communications Act of 1934, as amended, are as follows:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

The procedures to be followed in seeking authorization for assignment or transfer of a construction permit or license in the service here involved are specified in Section 21.29(h) of the Commission's Rules.

2. The Commission has consistently throughout its history held that delegation of control over authorized facilities by a licensee to another does constitute a violation of said Section 310(b) and is grounds

for revocation or refusal of a permit or license. (United States Broadcasting Corp. et al. 2 FCC 208, 236; Edwin A. Kraft et al. 3 FCC 560, 564; Brooklyn Broadcasting Corp. et al. 4 FCC 521, 531; Charles C. Carlson 5 FCC 155, 156; Radio Enterprises, Inc. 7 FCC 169, 174; Westinghouse Electric and Manufacturing Co. 8 FCC 195; Georgia School of Technology 10 FCC 110, 120.) It has also consistently held that the exercise of negative control, whether by contract or otherwise, does not fulfill the requirements of Section 310(b). (Master Broadcasting Corp. 6 RR 621.) The passage of control need not be legal control in a formal sense, but may consist of actual control by virtue of the special circumstances presented. (Town and Country Radio, Inc. 15 RR 1035 and cases there cited.)

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3. The circumstances here presented permit no conclusion other than that James C. Fields has at no time in the operation of station KIK578 assumed any of the responsibilities going with the construction permit and license issued. Essentially Mr. Fields rests his asserted control over station KIK578 on the posted notices noted in paragraph 18 of the findings of fact and the contracts he has had with Pinson, Inc. The bare assertion of reservation of control in a contract is not sufficient, however, to establish compliance with the applicable provisions of law and the Commission's Rules. Further had the modifications of January 3, 1959 and April 1, 1959 been known by the Commission, these agreements in and of themselves would have disclosed to the Commission the virtual abdication of control by Mr. Fields. The posted notices are even less indicative of the exercise of the degree of control required. Recognition of his power of control by both Mr. Fields and Pinson, Inc. is demonstrated by Mr. Fields' action in effectuating discontinuance of the operation of station KIK578 in compliance with the Commission's telegram of March 10, 1958. Insofar as is shown by the record, however, that is the only evidence of affirmative action on the part of Mr.

Fields in the construction or operation of this station. Mr. Pinson assisted in preparation of the application for this station. All equipment for the station was purchased by and billed to Pinson, Inc. with actual ownership of the receivers remaining in Pinson, Inc. for a period in excess of one year. Rental arrangements for the installation were made by Mr. Pinson. Installation of the equipment was ordered by Mr. Pinson. The receiver rental charge during the period of their ownership by Pinson, Inc. went directly to that firm. Maintenance of the receivers was provided by Pinson, Inc.

4. Active participation by Mr. Fields is not shown in any phase of the operation of station KIK578. All advertising was done in connection with the Pinson, Inc. services. The telephone listing was continuously under the services of Pinson, Inc. All billing was done by Pinson, Inc., initially under its own name and after April 1, 1959 under Mr. Fields' name. All bills and delinquent accounts were collected by Pinson, Inc. and the money so collected comingled with the funds of Pinson, Inc. until February of 1961. Even then there was a comingling of funds and only Pinson, Inc. could draw on the account established. Joint rates are offered to subscribers to the services of KIK578 and to the telephone answering service of Pinson, Inc. All expenses of operation were paid by Pinson, Inc. Subscribers brought their receivers to the offices of Pinson, Inc. for battery replacements or repair, Mr. Fields not having at any time maintained a separate place of business. The only solicitation of subscribers to the service made by Mr. Fields was to one or two of his friends. Mr. Fields has at no time maintained station records relying wholly on Pinson, Inc. to perform this service.

5. Mr. Fields' testimony herein also shows that he has at no time had a continuing personal interest in either the construction or operation of station KIK578. Pertinent portions of this testimony are detailed in the findings of fact (paragraphs 9 and 19). Particularly

pertinent is the fact that for a period of almost two years as of the date

of this testimony Mr. Fields had very rarely even come to Tampa, having decided it was an inconvenience to him and "silly" to have to personally check on the operation of the station. And at no time has more than a semblance of independence of operation been shown. After the investigation by members of the Commission's staff the billings were separated, separate books were set up, and Mr. Fields' name was placed on the windows of the Wallace S. Building. All these things, however, were done by Mr. Pinson personally or through Pinson, Inc. not by Mr. Fields. Viewed realistically, station KIK578 was also financed principally by Pinson, Inc. The transmitting equipment was purchased by Pinson, Inc. Installation and service on this equipment were arranged for by Pinson, Inc. On the basis of the evidence herein, it is concluded that Pinson, Inc. did pay for the engineering services rendered in connection with the application of James C. Fields. Receivers were purchased and paid for by Pinson, Inc. Insofar as is shown by the record, there have been only two cash transactions between these parties. One is the check dated March 3, 1958 from Mr. Fields to Pinson, Inc. in the amount of \$741.77 to cover a down payment on the transmitter and cost of the station installation. The other transaction is the check of January 7, 1959 from Pinson, Inc. to Mr. Fields in the amount of \$555.41. All other transactions have been bookkeeping entries only on the books maintained by Pinson, Inc., the details of which were not presented in evidence. Mr. Fields thus had a net cash investment of only \$186.36 or if his testimony of a total of \$1000 invested is accepted, a net cash investment of \$444.59. Giving consideration to the receivers only, the investment of Pinson, Inc. in station KIK578 was substantially in excess of that of Mr. Fields. It is accordingly concluded that James C. Fields has since commencement of construction of station KIK578 given complete control of the station and of its operations to Charles P. B. Pinson and the corporation controlled by him, contrary to the provisions of the aforesaid section of the Communications Act and the Commission's Rules implementing that section. Nor are there extenuating circumstances present. Both Mr. Pinson and Mr. Fields, in

view of their communications background, did or should have had knowledge of the applicable requirements. Also as reflected in the findings of fact, both parties were specifically advised of these requirements by members of the Commission's staff. Mr. Fields thereafter, however, persisted in his refusal to assume the responsibilities of operation of station KIK578 and Pinson, Inc. continued its operation under the unlawful delegation of control here found to have existed. By the rejected assignment application involving only a nominal recited consideration Mr. Fields and Pinson, Inc. would have given legal recognition to the existing de facto position of the parties. Additionally, service has been provided contrary to the provisions of the tariff of the station; contracts were entered into between Mr. Fields and Mr. Pinson which were not disclosed to the Commission until the present proceeding; and two unauthorized antenna installations have been made at station KIK578. For these reasons, it is concluded that James C. Fields is disqualified for reasons other than technical qualifications from being a licensee in this service.

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6. The issues with respect to the March 17, 1958 statements submitted by Mr. Pinson and Mr. Fields will next be considered. It is apparent that in at least one respect the statements made to the Commission under oath on March 17, 1958 by both Mr. Pinson and Mr. Fields were not in fact effectuated for a period of more than one year. Both refer to the employment contracts entered into which were included in the attachments to these statements. The contract of March 13, 1958 specifically provides that as employer Mr. Fields was to furnish and maintain the portable receivers for station KIK578. The station had not as of that date, however, commenced serving subscribers and there is nothing indicating that this was not at that time the intent of the parties. This provision was not, however, effectuated until April 1, 1959 after the staff investigation of the operation of station KIK578. Nor was the

Commission advised of the change in operation. A principal matter urged in connection with these statements relates to the check of Mr. Fields dated March 3, 1958. The Chief, Common Carrier Bureau, contends that the check, the ledger entry relative thereto and the conditional sales contract were in fact actions taken and back dated on the date of March 12, 1958 after Mr. Pinson's telephone call to the Commission. Both Mr. Pinson and Mr. Fields testified unequivocally that these actions were taken on March 3, 1958. The date of deposit of the check, the fact of alteration on the ledger sheet, and the fact of there having been five bank deposits by Pinson, Inc. between the dates of March 4 and March 11, 1958 without this check having been included tend to controvert this testimony. Yet there is also the circumstance of checks not received in the normal course of business being laid aside for Mr. Pinson's attention which, in at least two instances, resulted in the checks being held for a sufficient period to invalidate them. Mr. Fields' check would be one not received in the normal course of business. There is the further matter of Mr. Pinson's statement that no deposits had been made between the dates of March 3 and 12, 1958. This statement, however, was made in Washington, D.C. where company records were unavailable and a lapse of this period of time between deposits was not unusual. If innocently made, however, Mr. Pinson should have been more certain of his facts. Considered as a whole, the evidence is not sufficiently persuasive to conclude that these documents were in fact back dated in order to mislead and misinform the Commission. Nor is the evidence sufficiently persuasive to conclude that the circumstances surrounding the filing of the application for station KIK578 were other than as testified to by Mr. Fields. He candidly admitted that he thereafter lost interest in the project, that he was sorry he went into it and was satisfied to have Mr. Pinson operate it. It accordingly is concluded that the statements of Mr. Pinson and Mr. Fields dated March 17, 1958 insofar as can be ascertained from the record herein, were substantially true and correct when made.

7. A matter to be considered under issue 4 is the evidence relevant to the measurements of the Wallace S. Building by the R. G. Merrin firm and antenna installation of station KIK578. The pertinent testimony of each witness on this matter has been set forth in the findings of fact. On the basis of this testimony, it is concluded that no measurements were made on the date of March 6, 1961 as testified by Mr. Pinson. It is concluded that Mr. Pinson was not on the roof of the Wallace S. Building on the date of

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March 7, 1961 other than for the period instructions were being given of the measurements to be made. It is concluded that Mr. Pinson was not on the roof of the Wallace S. Building on the date of March 8, 1961 for a period in excess of approximately one hour between the time of 12:40 p.m. and 1:50 p.m. It is further concluded that he did not personally participate in making the measurements forming the basis of James C. Fields' Exhibit 6. Nor did he personally verify the accuracy of these measurements at the time they were being made other than for the antenna support and antenna mast, this verification being made on the date of March 8, 1961 at the time of installation of the new antenna. Mr. Pinson's testimony given under oath herein of his personal participation in the making and/or verification of these measurements was in all other respects false and deliberately given to mislead the Hearing Examiner and the Commission in order to qualify James C. Fields' Exhibit 6 and effect its admission in evidence. The success of this effort is attested by the admission of this exhibit in evidence on the basis of this testimony. It is also concluded that his testimony relative to the "structural steel mast" on the Wallace S. Building was purposely intended to be misleading as to the height of the building and antenna installation of station KIK578. Five other witnesses experienced no difficulty in recognizing this installation atop the Wallace S. Building as nothing more than a flagpole. Further Mr. Pinson and Mr. Fields were aware that Commission authorization had neither been granted nor

sought for the new antenna for station KIK578 installed on March 8, 1961.

8. The proposed operation of station KIQ516 is mutually exclusive with the present operation of station KIK578. It has previously been concluded that James C. Fields is not qualified to remain a licensee. In accord with the stated Commission policy, however, comparative consideration will be given these operations. The experience background of Mr. Rosenson and the mode of operation of the stations of which he is presently licensee have been detailed in the findings of fact. His proposed operation of station KIQ516 would be conducted in the same manner. The stations would remain under the full operational control and supervision of Mr. Rosenson. Validity of the reasons for which Mr. Rosenson seeks to modify the construction permit for station KIQ516 is fully established by the record. The possibility of interference to television reception would be eliminated, the reliability of selective pocket receivers for the 35 megacycle service has been proved and are readily available, whereas such is not the circumstance for the 43 megacycle range. From the record herein, it appears questionable that fully satisfactory service could be provided on the 43.22 megacycle frequency. The use of this frequency in Tampa would result in operating economies. For four or less receivers, rates would be somewhat higher than the ten dollar per month rate of station KIK578. Greater customer convenience would, however, be provided. Population residing within the 43 dbu contour would be somewhat greater than that within this contour of station KIK578. Weighing the differences shown in technical qualifications, past performance in the service here under consideration, the types of signaling service to be provided, and the differences in rates -- all factors heavily favor the application of Mr. Rosenson over that of Mr. Fields other than the rate difference. This difference is not of sufficient import

to offset the superiority of Mr. Rosenson in the other comparative areas.

Need for the service is shown both by Mr. Rosenson's study and the demonstrated use of the one-way signaling service of station KIK578. The public interest would, accordingly, be better served by a grant of the application of Alan H. Rosenson on a purely comparative basis than by a grant of that of James C. Fields.

9. In considering the applications herein of Charles P. B. Pinson, an important factor not present in the application of James C. Fields must be considered. By the authorization granted Alan H. Rosenson the public will not be deprived of an existing communications service for which a demonstrated need is shown. Refusal to renew the licenses for stations KIG289, KIB386, and KIG843 will deprive the public of existing services which the evidence of record herein establishes is utilized and has been satisfactory. Additionally, Pinson, Inc. here proposes to improve the technical phases of the service of stations KIG289 and KIG843 and to bring new communication services to the cities of Jacksonville and Clearwater, Florida. Civic consciousness is shown in the operation of the facilities of Pinson, Inc. in the free telephone answering service provided Christ Methodist Church in St. Petersburg and the Florida Nurses Association. That Mr. Pinson's general character and reputation in the community are good is fully supported by the record evidence.

10. In the balance, it has been concluded that Charles P. B. Pinson and Pinson, Inc. through him were part and parcel to the unauthorized delegation of control of station KIK578. It has also been concluded that he did not testify truthfully herein in qualifying James C. Fields' Exhibit 6. Were the unauthorized delegation of control the only counterbalancing factor compensating considerations are presented. The degree of disclosure in the statements of March 17, 1958; the Commission action in thereafter granting the application for modification of construction permit; and the close relationship of the parties with the demonstrated unwillingness of Mr. Fields to assume responsibility for the station could be deemed mitigating factors indicating that the requisite

responsibility placed in its licensees by the Commission could in the future be expected of Mr. Pinson and the corporate entity controlled by him. Nor is the uncontested violation of the Federal statute pertaining to hours and wages believed disqualifying, although it does give some insight into Mr. Pinson's disregard of applicable statutes and rules. The failure to collect and remit the Federal excise taxes could logically have been only from honest error. Neither Mr. Pinson personally nor the corporate entity could profit through this failure. Mr. Pinson, however, personally participated in installation of the new antenna for station KIK578 on March 8, 1961, well knowing that prior Commission authorization for such installation was required. He would also pervert the Commission's hearing processes by knowingly testifying falsely herein with the intent to mislead the Hearing Examiner and the Commission.

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11. The public interest is paramount and may call for a grant to an applicant in spite of his transgression. Refusal to grant the applications of Charles P. B. Pinson, Inc. will unquestionably result in a loss of important communications facilities by the public. Although it is reasonable to expect that others will ultimately step in and provide these services there is no assurance that such will occur and if so, at what point in time. In the instant circumstances, however, the more important public policy of protecting the integrity of the Commission's Rules and of the hearing processes must control. To hold otherwise would do violence to the regulatory concept and functions of the Commission and to the sanctity of administration of public affairs by administrative tribunals. The protection of these concepts must, in the public interest, remain paramount. In view, therefore, of the foregoing findings of fact and conclusions and upon consideration of the entire record in this proceeding, it is concluded that the public interest will be best

served by denial of the applications of Charles P. B. Pinson, Inc. and of James C. Fields and by a grant of the application of Alan H. Rosenson.

Accordingly, IT IS ORDERED, This 9th day of November, 1961 that unless an appeal to the Commission from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.153 of the Rules the applications herein of Charles P. B. Pinson, Inc. and of James C. Fields are denied and the application of Alan H. Rosenson, d/b as All-Florida Communications Company is granted.

/s/ Forest L. McClenning
Hearing Examiner
Federal Communications Commission

(SEAL)

Released: November 15, 1961 and effective 50 days thereafter subject to the provisions of the rule cited in the ordering clause above.

Exceptions, if any, must be filed within 30 days of the release date unless an extension is duly granted.

[Rec'd. January 4, 1962 - F.C.C.]

EXCEPTIONS OF CHIEF, COMMON CARRIER BUREAU

The Chief, Common Carrier Bureau, hereby respectfully excepts to the Initial Decision of the Hearing Examiner herein and to certain rulings of the Hearing Examiner as hereinafter indicated. We do not take any exception to the ultimate conclusion set forth in the Initial Decision, i.e., that the Fields and Pinson applications must be denied, and we concur therein. The purpose of these exceptions is to correct certain erroneous matters and to substantiate fully the ultimate conclusions in the Initial Decision.

We do not intend to make, nor do we make, any distinction throughout these Exceptions and the Brief in support thereof between the corporation, Charles P.B. Pinson, Inc. and the individual, Charles P.B. Pinson. No such distinction was made at the hearing, and the acts, deeds, and omissions of the one are the acts, deeds and omissions of the other. Each is the alter ego of the other, and they are fully inter-changeable.

Citations to previous pleadings or transcript references are contained only in the accompanying Brief rather than in both the Brief and the Exceptions because it facilitated presentation of our arguments and eliminated duplication of citations. The paragraph numbers of the Exceptions correspond directly to the paragraph numbers in the accompanying Brief and such paragraphs relate to each other. The citations contained in a particular paragraph of the Brief are equally applicable to the paragraph in the Exceptions bearing the same number.

1. We except to the failure of the Examiner to include, in his finding, in paragraph 4 of the Findings of Fact in the Initial Decision, that "Counsel for Pinson, Inc. was thereafter informally advised that the Commission

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was unwilling to grant both applications without an evidentiary showing that they could not be operated co-channel as the two frequencies sought were the only frequencies then available for this service", the added finding that Pinson was similarly advised by a member of the Common Carrier Bureau staff. Such finding is both significant and important.

2. We except to the failure of the Examiner to find that Pinson's testimony that "he was not in the fall of 1956 interested in opening a Tampa facility" (paragraph 5 of Initial Decision) is false in view of the finding in paragraph 6 of the Initial Decision that "Mr. Pinson's first contact with Mr. Wofford, owner and operator of Tampa Radio Dispatch Service and licensee of station KIB386, relative to purchase of the station was by telephone in the summer of 1956".

3. We except to the failure of the Examiner to find and conclude that Pinson and Fields originated and maintained, from October 3, 1956 (when Fields executed his original application for station KIK578), a plan or conspiracy to conceal from the Commission the true facts, i.e., that Fields would not personally control and manage and actively participate in the operation of his proposed station.

4. We except to the failure of the Examiner to find and conclude that Pinson and Fields lied in their affidavits of March 17, 1958, and that such untruths were presented to the Commission willfully for the purpose of deceiving the Commission and to induce a reinstatement of the grant to Fields which had been rescinded on March 10, 1958.

5. We except to the failure of the Examiner to find and conclude that Pinson and Fields willfully misrepresented to the staff of the Commission,

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in March 1958, that they would establish and maintain their operations in such fashion that Fields would conduct his business operations at

arms' length from Pinson and entirely in his own behalf, and that this posture would be achieved, among other things, by Fields undertaking his own solicitation of accounts for his station KIK578, that the billings and collections for such accounts would be by him in his own behalf, that any contracts or other arrangements relating to the operation of such station would be made in his name and in his behalf, and that he would undertake proper day-to-day personal supervision of the business.

6. We except to the failure of the Examiner to find and conclude that Pinson testified falsely at the hearing in this proceeding when he stated that amendments of January 3, 1959, and April 1, 1959, respectively, to the March 13, 1958 contract between Pinson and Fields had been shown to members of the Commission's staff.

7. We except to the failure of the Examiner to find and conclude that Pinson testified falsely, willfully and deliberately with respect to the circumstances surrounding the deposit in his corporate bank account of the check of March 3, 1958, received from Fields.

8. We except to the failure of the Examiner to find and conclude, in finding 15, that, though the Commission acted in reliance upon the representations made by Pinson and Fields in their respective affidavits of March 17, 1958, those affidavits were false and misleading and were submitted willfully and deliberately for the purpose of deceiving the Commission.

9. We except to that portion of paragraph 16 of the Findings of

Fact which relates "Accordingly an informal investigation was made in March and April 1959, including a check of the records of the common carrier operations of Pinson, Inc. and interviews with Mr. Pinson, Mr. Fields, certain employees of Pinson, Inc., and the public accountant whose services were used by both Pinson, Inc. and Mr. Fields" because this is an erroneous statement of the facts.

The paragraph should read: "Accordingly, an informal investigation was made in March and April 1959, including a check of the records of the common carrier operations of Pinson, Inc. and interviews with Mr. Pinson, Mr. Fields, and certain former and then current employees of Pinson, Inc."

10. We except to the Examiner's failure to find and conclude that Pinson testified falsely concerning the matters contained in finding 16 of the Initial Decision, when Pinson denied that he had received instructions, with Fields, as to corrective actions he should take to demonstrate compliance with statutory requirements and requirements of the Commission's rules in relation to the operation of station KIK578. We further except to the Examiner's failure to find and conclude that, despite the express instructions set forth in paragraph 16 (which he found to have been given to the parties), these instructions were not carried out even at the time of the hearing herein, and that this willful and deliberate flouting of the Commission's authority and directives requires a conclusion that both Pinson and Fields lack the necessary character qualifications to be licensees in the subject service and demonstrates that they are incapable of being further entrusted with radio station authorizations.

11. We except to the failure of the Examiner to find and conclude that the major financing for the construction, operation and maintenance of

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station KIK578 was undertaken by Pinson and not by Fields, and that this financing was so handled despite injunctions to the contrary given these parties by the staff in March 1958 and in April 1959, and despite representations from Pinson and Fields that all the financing would be undertaken exclusively by Fields.

12. We except to the failure of the Examiner to find and conclude, from all of the circumstances of the case, that there was, in fact, a lack of arms' length dealing between Pinson and Fields and that this circumstance is further evidence of the conspiracy engaged in by the parties, willfully and deliberately, to deceive the Commission concerning the identity of the real party in interest herein.

13. We except to the Examiner's failure to note, in paragraph 17 of his findings, that the bank account established by Pinson, Inc. in escrow for Fields was not established until a time toward the close of the hearing herein (in February 1961), and that such bank account still does not accord with the instructions given to the parties (see paragraph 16 of the Findings), since Fields has no right to control the funds in the account and there continues to be a co-mingling of Fields and Pinson monies.

14. We except to that portion of paragraph 18 of the Findings which states "Since its establishment there has been a notice on the directory board of the Wallace S. Building that Mr. Fields is owner of the one-way paging system . . ." (underscoring supplied), since it does not appear that this statement is supported by the record evidence.

15. We except to the failure of the Examiner to indicate, in paragraph 19 of his Findings, that he is referring to the investigation of

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March 1959 and suggest the insertion of the phrase "of March 1959" following the word "investigation" in the second line.

16. We except, in view of the statements of the Examiner in footnote 14 and in the other findings and conclusions herein, to the failure of the Examiner to find and conclude that Pinson and Fields have the burden of proof on issues (5) and (h) in the respective hearing orders involved herein, and to his failure to find and conclude that these parties did not meet their burden of proof with respect to each of

such issues. We further except to the failure of the Examiner to find and conclude, in light of the failure to meet such burden of proof, that the applications of both these parties must be denied on that account, without regard to any other findings and conclusions herein.

17. We except to the sentence, in footnote 14 to paragraph 17 of the findings, which states "These records were, however, made available to Commission counsel during the course of the hearing". This sentence should be stricken in its entirety.

18. We except to the failure of the Examiner to make appropriate findings and conclusions relative to the facts set out in findings 22 and 23. It is apparent that the further finding and conclusion to be drawn from the facts there set forth is that a public offering was made by Pinson, in Tampa, of one-way signaling service at the time when such service was allegedly being established by Fields.

19. We except to the failure of the Examiner to find and conclude, from the matters recited in paragraph 24 of the Findings, that Pinson persisted in willful and deliberate violation of his alleged agreements with

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Fields, of his representations to the Commission, of applicable statutory and rule provisions, and in defiance of every aspect of lawful regulation.

20. We except to the refusal of the Examiner to take official notice of the records of the Engineer-in-Charge of District #7 of the Federal Communications Commission, evidencing the failure of Pinson and Fields to give notice of the commencement of equipment and service tests for station KIK578 (see footnote 20 to paragraph 24 of Findings).

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21. We except to the failure of the Examiner to make an appropriate finding and conclusion relative to the matters contained in paragraph 26 of the Findings. Having found that Pinson made certain misrepresentations concerning his failure to file a financial statement as part of his 1959 Form L report, the Examiner has failed to conclude that Pinson was lacking in candor and to note its significance relative to the character and other qualifications of Pinson as a licensee.

22. We except to the Examiner's failure to find and conclude in the light of the findings set forth in paragraph 28, that Pinson and Fields misrepresented, under oath, willfully, wantonly and deliberately concerning the relative heights of the antenna installations proposed for the Wallace S. Building and the First National Bank Building, and that such matter bears substantially upon the conclusion that these parties lack character qualifications.

23. We except to the failure of the Examiner to conclude, in paragraph 3 of the Conclusions, that all financing of station KIK 578, other than the first payment of \$741.77, was effected by Pinson.

24. We except to the Examiner's failure, in paragraph 4 of the Conclusions, to note that the lack of active participation by Fields in the operation of station KIK578; the advertising of the KIK578 services in the name of Pinson; the telephone listings in the name of Pinson; the billing in the name of Pinson; the collection of monies for station KIK578 by Pinson and the co-mingling with such funds with those of Pinson; the offering of joint rates to subscribers of station KIK578 and to the telephone answering service of Pinson; the payment of operating expenses by Pinson; the solicitation of subscribers by Pinson; and the failure of Fields to

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maintain his own independent station records, were all contrary to specific advice with regard thereto repeatedly given by the FCC staff to Pinson and Fields.

25. We except to the Examiner's failure to conclude, in paragraph 5 of the Conclusions, following his statement that "All other transactions have been bookkeeping entries only on the books maintained by Pinson, Inc., the details of which were not presented in evidence", that Pinson and Fields had failed to sustain the burden of proof with regard thereto placed upon them by issues (5) and (h), respectively, in the hearing orders involved herein.

26. We except to that portion of the Examiner's Conclusion 6 which reads: "The station had not as of that date, however, commenced serving subscribers and there is nothing indicating that this was not at that time the intent of the parties." This conclusion is not in accord with the actual facts of record.

27. We except to that portion of the Examiner's Conclusion 6 which states "There is the further matter of Mr. Pinson's statement that no deposits had been made between the dates of March 3 and 12, 1958. This statement, however, was made in Washington, D.C. where company records were unavailable and a lapse of this period of time between deposits was not unusual." This conclusion of the Examiner is contrary to the evidence of record.

28. We except to the final sentence of paragraph 6 of the Conclusions, because such conclusion is totally unwarranted and unsupported by the findings and conclusions presently stated in the Initial Decision, as

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well as the revised and additional findings and conclusions herein proposed.

29. We except to the failure of the Examiner to grant Commission counsel's request to strike Fields' Exhibits 6 and 8, in view of the conclusions reached in paragraph 7 of his Conclusions.

30. We except to the Examiner's failure to conclude, in light of the Conclusions in his paragraph 7, that Pinson deliberately gave perjured testimony with respect to a material matter in the instant proceeding with intention to mislead the Examiner and the Commission, and that this action definitely and completely disqualifies him on the basis of character from being a licensee in this service, and that such action warrants consideration by the Commission as to the advisability of referral of the record herein to the Attorney General of the United States for appropriate criminal prosecution.

31. We except to that portion of paragraph 10 of the Conclusions which states "The degree of disclosure in the statements of March 17, 1958; the Commission action in thereafter granting the application for modification of construction permit; and the close relationship of the parties with the demonstrated unwillingness of Mr. Fields to assume responsibility for the station could be deemed mitigating factors indicating that the requisite responsibility placed in its licensees by the Commission could in the future be expected of Mr. Pinson and the corporate entity controlled by him." These conclusions are totally contrary to the facts found by the Examiner in his Initial Decision and totally contrary to the facts and conclusions as modified by our proposals herein.

32. We except to the Examiner's failure to make the ultimate

conclusion with respect to issue (1) in the order relating to Pinson, Inc., i.e., that Pinson, Inc. is totally lacking in character and totally disqualified to be a licensee in this service.

33. We except to the Examiner's failure to determine issues (6) and (i) of the respective hearing orders herein, and to his failure to conclude that Pinson and Fields have, continuously from the inception of the establishment of station KIK578, effected a violation of Section 310(b) of the Communications Act of 1934 and Section 21.29(h) of the Commission's rules with regard to the concealment of the real party in interest, and the unauthorized transfer of control effecting station KIK578.

34. We except to the Examiner's Order of September 7, 1961, denying our motion of August 15, 1961, to take official notice of certain specific documents concerning the operation of station KIK578 which were filed with the Commission by James C. Fields and Charles P.B. Pinson, Inc. after the closing of the record and the filing of Proposed Findings of Facts and Conclusions of Law herein. We respectfully urge that such Order should be reversed. The Commission should take official notice of the documents identified in such motion, and incorporate an appropriate finding and conclusion in the final decision herein, establishing that Pinson conceded and stated against interest, in a telegram of August 4, 1961, that "Charles P.B. Pinson, Inc. has a vested property interest in this station (KIK578) . . ." (underscoring supplied). This concession and statement against interest confirms the unauthorized transfer of control which is at issue in this proceeding and warrants a further determination

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that Pinson and Fields effected such unauthorized transfer of control contrary to law and the Commission's regulations. Such concession and statement against interest, examined in the context of the entire record herein, also confirms the existence of the conspiracy of Pinson and Fields to effect such unauthorized transfer of control from the outset of the establishment of station KIK578 and to conceal such fact from the Commission, and warrants a conclusion to that effect.

35. If the Commission is not otherwise persuaded and satisfied that Pinson and Fields are utterly and completely foreclosed from being licensees in this service, then, and only contingent on that circumstance, do we press an exception to the Examiner's Order of August 4, 1961, denying our petition of July 19, 1961, to re-open the record in this proceeding for the purpose of taking the testimony of John W. Staly.

36. We except to the Examiner's failure to find and conclude, in light of the express conflict between the staff testimony and Pinson's testimony concerning instructions given him as to the manner in which Pinson and Fields were to conduct their business affairs relative to station KIK578, and the findings in paragraphs 13 and 16, that Pinson testified falsely when he denied receiving advice concerning these matters, and that this false testimony further demonstrates the pattern of falsification undertaken by Pinson prior to, and during, the hearing and further demonstrates his complete lack of character qualifications.

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Respectfully submitted,

John J. Nordberg, Chief
Common Carrier BureauBy: /s/ Lawrence M. De Vore,
Attorney Common Carrier Bureau

[Certificate of Service]

DECISION

By the Commission: Commissioners Minow, Chairman; and Lee not participating.

1. This proceeding involves nine applications in the Domestic Public Land Mobile Radio Service. Seven relate to Charles P.B. Pinson, Inc. (Pinson), and involve the question of whether Pinson is qualified as a licensee by reason of alleged misconduct, violation of rules, and misrepresentations. James C. Fields (Fields) seeks renewal of a license for one-way service in Tampa, Florida, and questions as to his licensee qualifications also obtain. In the event Fields be not disqualified, his application is to be compared with the modification application of Alan H. Rosenson (Rosenson), an existing permittee on another frequency, for the use of the same frequency.

2. Hearing Examiner Forest L. McClenning, in an Initial Decision released November 15, 1961 (FCC 61D-163), proposed denial of the Pinson and Fields applications and grant of Rosenson's application. Pinson and Fields jointly except thereto, and the Common Carrier Bureau (hereinafter Bureau), although concurring in the result, urges by way of exceptions additional adverse conclusions as to Pinson and Fields.^{1/} The Commission's rulings on the exceptions are contained in the appendix hereto.

3. The Initial Decision adequately sets forth the background and history of this proceeding, which need not be repeated. The Findings of Fact contained in the Initial Decision are considered to be substantially accurate and complete, and, with the modifications, corrections, and deletions noted herein and in the appendix, they are adopted. Although we agree with the Examiner's ultimate result, his conclusions, in view of the exceptions taken thereto, require some comment, which is set forth below. A brief review of the pertinent facts will serve to place our conclusions in their proper context.

1/ Although Pinson and Fields requested oral argument, they failed to appear by counsel at either the argument scheduled for May 7, 1962, or the subsequent argument (scheduled on the Commission's own motion to permit Pinson to secure counsel) of June 8, 1962, despite the filing of a Notice of Appearance by their counsel of record prior to each argument.

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4. The issues relating to the licensee qualifications of Pinson and Fields spring chiefly from an alleged improper transfer of control by Fields of his Station KIK578 (renewal of which is here sought) to Pinson. Charles P.B. Pinson, Inc., is wholly owned by Charles P.B. Pinson. In 1955, Pinson was the permittee of two-way Station KIG289 in St. Petersburg, and the operator of a telephone answering service there. In that year he applied to the Commission for two new one-way stations on different frequencies in St. Petersburg and Tampa, respectively, subsequently dismissing the Tampa application after being informally advised by the Commission of the necessity for a showing that the proposed stations could not be operated on the same channel, since the two frequencies he sought were at that time the only ones available for this service. Following dismissal of the Tampa application, Pinson's St. Petersburg application was granted without hearing and a construction permit issued in October 1955 for Station KIG843. Fields, Pinson's 70-year-old father-in-law, testified (see par. 9, infra) that he thereupon gave consideration to applying for the Tampa frequency and discussed with Pinson the benefits which might accrue through Pinson's operation of a Tampa station as Fields' contract employee. Fields executed an application in October 1956, filed it in January 1957, and received a construction permit in July 1957. During this period, Pinson negotiated with Joseph H. Wofford with a view towards purchasing his Tampa two-way station, KIB386, culminating in a contract of sale dated June 25, 1957, the Commission approving the transfer on October 28, 1957. Pinson took over operation of the station and opened a Tampa answering service in February 1958.

5. Fields' station was licensed March 4, 1958, with the call KIK578, and began operation on or about that date. Complaints of interference to television receivers brought to the Commission's attention that KIK578 (Fields' one-way station) and KIB386 (Pinson's two-way station) had control points at the same location and that there was some apparent inter-relationship. On March 10, 1958, the Commission reconsidered and rescinded its action licensing KIK578, and on March 12, 1958, in a telephone conversation with Commission personnel, Pinson disclosed his family relationship with Fields. He was thereupon advised of the necessity for insuring that their dealings were bona fide, and of factors which would tend to establish this fact.

6. On March 18, 1958, Pinson came to Washington and filed an application to change frequency of Fields' KIK578, which was granted the same day. Pinson submitted at that time to Commission staff members (a) affidavits of Fields and himself dated March 17, 1958; (b) evidence of a conditional sale of a transmitter by Pinson to Fields on March 3, 1958; and (c) employment contracts between Fields and Pinson dated November 5, 1957, and March 13, 1958. The purpose, and the effect, of the submission of the foregoing documents was to convince such staff members that the Pinson-Fields business relationship was bona fide.

7. A subsequent informal Commission investigation in March and April 1959, revealed that Fields had little or no part in the operation

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and control of Station KIK578 and that, despite the provisions of the March 1958 employment contract, Pinson owned the pocket receivers, rendered all bills in his own name, and made payments on the transmitter and other Fields obligations, making only periodic accounts to Fields. As a result of suggestions received from Commission investigators, Pinson thereafter transferred the pocket receivers to Fields for \$40 each (approximately the original cost), rendered bills in

Fields' name, set up separate books for Fields' accounts, and had Fields' name posted on the windows and doors of the Tampa office for the first time. However, revenues continued to be commingled until February 1961, when a separate account was set up for Fields' funds. Even then, though, only Pinson could make withdrawals, and \$500 of his own money was also deposited in the account.

8. The Examiner concluded on the basis of the foregoing that Fields was guilty of violating Section 310(b) of the Communications Act and Section 21.29(h) of the Commission's Rules, in that he surrendered control of Station KIK578 to Pinson without Commission authority, and that Fields is thereby disqualified from being a licensee of the Commission. He concluded further that Pinson was a party to such violation, and that, in view of certain matters in aggravation (described below), Pinson is also disqualified.

9. The Bureau, while it agrees with the ultimate result, urges that the Examiner miscast the Fields and Pinson roles in the improper transfer of control. The Examiner apparently viewed Pinson's assumption of control of KIK578 as resulting from Fields' unwillingness to assume responsibility for the station, whereas the Bureau contends that Pinson used Fields as a "front" from the outset, with no intention that Fields ever have control over the station. Support for the Bureau's theory is found in the facts that (a) Fields' application was prepared by Pinson in his offices; (b) the engineering work therefor was paid for by Pinson; (c) in the fall of 1956, after the application was signed but before it was filed with the Commission, Pinson solicited business on his own letterhead for a Tampa exchange to open about January 15, 1957; (d) Pinson ordered the equipment, leased space, arranged for roof rental, and contracted for maintenance of the equipment, all prior to the commencement of the station operation; and (e) the only affirmative act shown to have been taken by Fields was his ordering the station off the air upon receipt of the Commission's telegram of March 10, 1958, rescinding its action granting his license application (par. 5, supra).

These facts convince us that the Bureau's position is essentially correct, and we find and conclude that Fields was no more than a straw-man for the real party-in-interest, Pinson.

10. It necessarily follows from the foregoing conclusion that (a) the statement contained in Fields' original application that he would have absolute control over the physical operation and service of the station; (b) the claim in his letter to the Commission of May 27, 1957, that he intended to manage the station and actively participate in its operation;

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(c) the contract of March 13, 1958, providing for Fields' ownership of transmitter and receivers and Fields' payment of all necessary costs; and (d) the Fields and Pinson affidavits of March 17, 1958, stating inter alia that there was no agreement between Pinson and Fields as to the ownership or operation of the station prior to November 1957, are all false, and were designedly so in order to mislead the Commission into believing that Fields was the real party-in-interest.

11. As noted above, the Examiner rested his disqualification of Pinson in part on certain aggravating circumstances. These include (a) Pinson's false testimony under oath in this proceeding as to his personal participation in the measuring of the Wallace S. Building; (b) Pinson's "uncontested violation" (by consent judgment) of Federal law concerning wages and hours; and (c) Pinson's violation of Section 21.109(b) of the Commission's Rules, through installation of a new antenna for KIK578 without Commission authority.^{2/} The instant Decision, however, is not dependent upon such matters, and they have not been considered in reaching our ultimate result. Nor is the Commission fully convinced of the validity of these conclusions. Without belaboring points unnecessary to the ultimate issue, we think it appropriate to note that considerable ambiguity exists in the record as to the extent to which Pinson claimed to have participated in the

measurements, and to what extent others observed such participation. Similarly, the consent judgment involving the Federal wages and hours law appears to have merely enjoined Pinson from future violations and does not include a finding of past violation. Finally, we cannot conclude that Section 21.109(b) of the Rules^{3/} was violated by Pinson's action in replacing a substandard antenna arrangement with one which would bring the station's operation into substantial conformity with the license. The obvious purpose of the rules is to preclude an operation inconsistent with the license rather than a correction thereof.

12. In reaching the conclusion that Fields and Pinson lack the requisite character qualifications to be licensees of the Commission, we have not overlooked that both established on this record that they have reputations in their community for honesty and good character. Such general character evidence can hardly be controlling, however, in view of the specific demonstration in this proceeding of a willingness to deceive a governmental regulatory body to achieve private ends.

13. In view of the disqualification of Fields, there remain no factors which would preclude grant of the mutually-exclusive application

2/ Another basis, that Pinson improperly failed to collect and remit excise taxes on his service, is not responsive to the issues and is therefore entitled to no weight. Similarly, the tariff violations found by the Examiner were not contemplated by the issues.

3/ Section 21.109(b) reads as follows: "No replacement or change of antenna or antenna structure shall be effected without prior authorization from the Commission if such replacement or change will alter the gain or directivity of the antenna in the horizontal plane or the height of the antenna or antenna structure above ground."

of Alan H. Rosenson, d/b as All-Florida Communications Company, and the Commission is in agreement with the Examiner that the public interest, convenience, and necessity would be served thereby.

ACCORDINGLY, IT IS ORDERED, This 25th day of July, 1962, that the above-captioned applications of Charles P.B. Pinson, Inc., and James C. Fields ARE DENIED, and the application of Alan H. Rosenson, d/b as All-Florida Communications Company, for modification of construction permit for Station KIQ516 to change frequency to 35.22 Mc, IS GRANTED; and

IT IS FURTHER ORDERED, That, in order to permit Charles P.B. Pinson, Inc., and James C. Fields to wind up their affairs, authorization to operate Stations KIB386, KIG289, KIG843, and KIK578 shall terminate at 3:00 A.M. EST, on August 31, 1962.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Released: July 30, 1962

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APPENDIX

Rulings of the Commission upon Exceptions to the Initial Decision

Joint Exceptions of Charles P.B. Pinson, Inc.,
and James C. Fields

<u>Exception</u>	<u>Ruling</u>
1, 5, 14	<u>Denied.</u> The denials of further continuances were a proper exercise of the Examiner's discretion.
2-4,7,11,13, 30, 31, 37, 58	<u>Denied,</u> for lack of specificity as to how error was committed and how exceptor was prejudiced thereby.
6, 60	<u>Denied.</u> The Orders designating the applications for hearing sufficiently particularized the issues.
8, 10	<u>Denied.</u> The record supports the Examiner's finding.

ExceptionRuling

9, 27-29

Denied, as lacking the specificity required by 47 CFR 1.154. The proposed findings, the Examiner's failure to adopt which is excepted to, cover six pages and deal with a variety of matters, some of which are irrelevant and immaterial, others of which have been substantially adopted by the Examiner, and the remainder of which are not supported by the record.

12

Denied in substance. The stricken evidence is immaterial.

15

Denied as irrelevant, the specified issues speaking for themselves.

16, 22-24

Denied as cumulative.

17

Denied as irrelevant. As urged in Exception 15, supra, there was no issue as to service rendered by Pinson's stations.

18, 36, 38, 40

Denied as irrelevant.

[923]

19-21

Denied as lacking decisional significance.

25, 39

Denied. The substantial weight of the evidence supports the Examiner's finding that Pinson paid for Fields' engineering.

26

Denied in substance. The requested findings are in part irrelevant and in the remainder not supported by the record as a whole.

ExceptionRuling

32, 59

Denied. The Examiner's denial of severance, and his refusal to adjourn the hearing to permit Exceptor to petition the Commission for severance were reasonable exercises of his discretion. Severance of Pinson's applications would have been inappropriate, in view of the issues in this proceeding.

33-35

Denied. The Examiner's Findings are substantially accurate and complete.

41

Denied as redundant of findings in paragraph 21 of the Initial Decision.

42, 43, 44(a),
(b), and (c)

Granted to the extent that Pinson Exhibit 37 is deemed admitted, the Examiner's rejection thereof being based upon an unwarranted extension of the agreement among counsel.
Denied as to the remainder, as the evidence was subsequently admitted.

44(d)

Granted, and Pinson Exhibit 38 is deemed admitted.

45-50

Denied. The Examiner's rulings were proper.

51, 52

Denied, for lack of particularity.

53

Denied. See paragraph 9 of the Decision.

54

Denied. The conclusion urged is unsupported by the record.

55

Granted to the extent reflected in paragraph 11 of the Decision.

56

Denied, in view of the Decision.

[924]

ExceptionRuling

57

Denied. The matter for which enlargement was sought does not relate to the issues specified, and the Examiner lacks authority to modify or enlarge such issues.

Exceptions of the Commission's Common Carrier BureauExceptionRuling

1

Granted. See paragraph 4 of the Decision.

2, 7, 21, 22

Denied. The conclusions suggested, while not without record support, are unnecessary to the instant Decision.

3-5, 8, 12, 18,

19, 26, 28, 31-33

6, 10, 36

Granted in substance. See paragraphs 9 and 10 of the Decision.

Denied. The Commission adopts the Examiner's findings rejecting Pinson's testimony, but does not regard as necessary a conclusion that the rejected testimony was knowingly false.

9

Granted, and paragraph 16 of the Findings is corrected by deleting from the fourth sentence thereof the reference to a "public accountant".

11, 13, 23

Denied, as redundant of findings and conclusions made elsewhere.

14, 27, 34

Denied as lacking decisional significance.

15

Granted, and the first sentence of Finding 19 is corrected to add "of March 1959" after "investigation".

16, 17, 25

Denied. While in a strictly legal sense Pinson and Fields had the burden of proof because of their status as applicants, the Bureau was not free from a duty of proceeding at certain stages of the proceeding, particularly in view of its agreement to do so reached at pre-hearing conference.

ExceptionRuling

20

Denied. The evidence sought to be adduced does not lie within the designated issues, and the matter is not of decisional significance in any event.

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24

Denied, as immaterial to the appropriate issue, which seeks determination of whether the acts of Pinson and/or Fields were contrary to the Communications Act or the Commission's Rules.

29, 30

Denied. See paragraph 11 of the Decision.

35

Denied, as mooted by our action herein.

[930]

[Received August 28, 1962 FCC]

MAYER U. NEWFIELD
ATTORNEY AT LAW
1119 FIRST NATIONAL BUILDING
BIRMINGHAM 3, ALABAMA
FAIRFAX 2-9965

August 27, 1962

Air Mail

Return Receipt Requested

Mr. Ben F. Waple, Acting Secretary
Federal Communications Commission
Washington 25, D. C.

Re: Charles P. B. Pinson, Inc. et al.

Docket No. 13579 et al.

Dear Sir:

On behalf of Charles P. B. Pinson, Inc. and James C. Fields, applicants in the above matters, I hereby submit for filing original (manually signed) and 14 conformed copies of Petition for Rehearing, Reconsideration and Stay.

Will you kindly notify me by collect telephone call as soon as this letter is received?

Since the Commission as of now has ordered applicants' stations off the air as of 3:00 o'clock A.M. EST on August 31, 1962, please also notify me by collect telephone call and by confirmatory telegram as soon as the Commission has acted on the enclosed request for a stay order.

Very truly yours,

/s/ Mayer U. Newfield

Enclosures: (15)

[931]

[Received August 28, 1962, FCC]

Before the
Federal Communications Commission
Washington 25, D. C.

In re: Applications of)	Docket Nos.
Charles P. B. Pinson, Inc. et al.)	13579, et al.

PETITION FOR REHEARING, RECONSIDERATION
AND STAY

Come Charles P. B. Pinson, Inc. and James C. Fields, applicants herein, and pursuant to Section 405 of the Federal Communications Act, 47 U.S.C. Section 405, as amended, and Section 1.191 of the Commission's Rules of Practice hereby respectfully petition for a rehearing and reconsideration in support thereof, set down and assign the following:

1. The Commission's ruling on applicants' Exceptions 1 and 5, involving motions for continuance of the hearing on the ground that the four-year old child of Charles P. B. Pinson, president and owner of Charles P. B. Pinson, Inc., was ill with scarlet fever and the child's mother was unable to care for the child because she was under psychiatric treatment in a hospital, was erroneous. The Examiner's denial of said motions was an unjust, unwarranted and arbitrary abuse of his discretion, was highly prejudicial to applicants' property rights without due process of law, because said denial compelled applicants to proceed with the hearing under inhumane and adverse conditions.

2. The Commission's ruling on applicants' Exception 2 was erroneous. Said exception is as follows: "The Hearing Examiner failed to comply with the provisions of Section 1.142(d) of the Rules of Practice and Procedure". Section 1.142(d) requires the Examiner at the commencement of the hearing to recite all actions

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taken at the pre-hearing conference, incorporate all stipulations and agreements approved by him, and announce any special rules which he deems necessary to govern the course of the proceeding. Exception 2 flatly charged a failure to comply with said rule and no specification of the Commission's own rule was required. An examination of the record itself would either confirm or reject applicants' flat statement. Moreover, no recital of precisely how applicants were prejudiced should be necessary. Implicit in the enactment of such rule was a recognition that its observance was required in the interest of fair and orderly procedure. The failure to observe the rule compounded the difficulties confronting applicants as set forth in paragraph 1. and elsewhere herein (R.1135-6).

3. The Commission's ruling on applicants' Exception 7 is erroneous. As to specificity, the exception clearly states that error was committed by the Examiner's refusal to instruct or admonish the Commission's investigator--administrator--attorney--witness to abstain during the remainder of the hearing from covertly interrogating applicants' auditor and coupling such interrogation with a request that said auditor, in violation of his professional ethics, not disclose to his client the fact of such interrogation (R. 99, 100, 102, 1129). The same Commission's counsel induced the same witness, under threat of being subpoenaed and being inconvenienced while awaiting his turn to testify, to sign a document falsely stating that the witness had already been served with a subpoena (R. 1131-2-3). As to prejudicing applicants: the refusal of the presiding officer to give such instruction or admonition tended to encourage browbeating and intimidation of witnesses and to lead to other abuses during the course of the hearing. For example, when the hearing was reconvened in Washington on June 29, 1961, the witness Heldt, a civil engineer employed by applicant James C. Fields, was instructed by Commission counsel not to talk to applicants or to applicants' counsel (R.2142). The Examiner refused to instruct Heldt that he

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was free to do so (R. 2143). Previously, when Heidt was subpoenaed by the Commission, he had unsuccessfully sought permission of Commission counsel to notify his client (R. 2165). Small wonder that the witness expressed a "fear" of the Government (R.2238). He had previously been questioned by a man whom he took to be an agent of the FCC "or the FBI" (R.2154). As a consequence of such tactics, this professional civil engineer did not get in touch with his client (R.2163). Had he done so, it is quite possible that applicants might have been spared the expense of a trip to Washington; in any event, they would have been enabled better to prepare themselves for the reconvened hearing in Washington.

4. The Commission erroneously denied applicants' Exception 8 and 10 on the ground the record supports the Examiner's finding that none of the matters presented shows any improper or prejudicial action by the Commission's investigators and hence they were deemed of no materiality. It is respectfully submitted that a reconsideration of said Exceptions and of the record will confirm such error. What is involved is the unlawful examination of applicants' files, correspondence and records by the Commission's witness. Testimony of applicants' employee included the following: "It was obvious that (the investigator) had been going through the files and correspondence on my desk. (The investigator) showed me his identification and then took over the office completely" (R.1727). Applicants' witness (an office secretary) then stated that she left the room momentarily and that when she returned: "... (The investigator) was going through our filing cabinets". (Proposed findings 57-65; R.1727-33, 1736-37, 1748, 1751-52, 1755).

5. The Commission's ruling on applicants' Exception 12 was erroneous. This exception relating to the testimony of applicants' witness that the office secretary referred to in the preceding paragraph "seemed highly nervous and had tears in her eyes" after

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the Commission's witness interrogated her. The Commission ruled the stricken evidence was immaterial. The materiality of such testimony lies in the fact that it is corroborative of earlier testimony as to the circumstances under which evidence was obtained by the Government's witness. Testimony by the Government's witness as to facts obtained in such manner was obviously improper.

6. A reconsideration of applicants' Exceptions 25 and 39 and of the record references pertaining thereto should clearly result in a reversal of the Commission's ruling that the substantial weight of the evidence supports the Examiner's finding that Pinson paid for Fields' engineering. It is uncontroverted that the order for the engineering data for the Fields' station was issued by Fields, (R.991). The engineer Deeters testified repeatedly to a clear recollection that his engineering fee had been paid for by Fields and not by Pinson (R.1949, 1950, 2035). This testimony is fully corroborated by Fields who stated that he was "quite confident" he paid Deeters (R.992). Deeters substantiated the earlier statement by Fields that Fields had telephoned him asking him to proceed with the engineering for the station (R.1947). Despite rigorous cross-examination by Commission counsel, Deeters finally testified that a check of \$170.60 which he had received from Pinson was not in payment of the charges incurred for the Fields' engineering, Deeters stating at page 2036: "I don't feel that the check for \$170.60 had anything to do with the Fields' engineering." There is no evidence to contradict either Fields' testimony or the engineer's testimony. Therefore, there is no basis in actual evidence which would support a contrary filing.

It should also be borne in mind, in evaluating the weight to be accorded Deeters' testimony, that he makes his living acting for persons who have radio licenses pending before the Commission (R.1946). It is natural, therefore, to assume that in a matter

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where his records are not available to prove precisely what occurred some years before, he would not carelessly or lightly testify in favor of a licensee whose fitness is challenged by the Commission staff.

7. The Commission's denial of Exception 13 was erroneous. The refusal of Commission counsel to furnish a list of persons subpoenaed (R.63-4) or to give further specifications as to which of the voluminous facts referred to in the orders for hearing applicants would be required to meet (R.65), was violative of the spirit of the agreement made at pre-trial and placed an unfair burden on applicants. As an example, information was imparted to counsel for applicants only three days before the hearing commenced that the Commission's staff had no evidence to present in support of the accusation that Pinson had violated the Federal income tax statutes. Such information was not volunteered by Commission counsel but was given as the result of an inquiry by Pinson's attorney (R.66-8).

8. A reconsideration of the record should result in a reversal of the Commission's ruling on applicants' Exception 26 which is based on proposed findings 66 through 77. The Examiner in paragraph 6 of his initial decision erroneously concludes that Wofford, the owner of Tampa station KIB386 later sold to Pinson, Inc. on June 24, 1957, was first contacted by Pinson relative to such sale in the summer of 1956 and that Wofford "could state only that he believed the contacts were between February and May 1957". This overlooks documentary evidence and testimony showing that the inception of negotiations leading to such sale was on May 29, 1957. Fields' application for a Tampa license was executed in October, 1956 and was filed in January, 1957. See paragraph 4 of the Commission's Decision. Similarly, the statement in said paragraph 4 that during the period October, 1956 - July, 1957 Pinson negotiated with Wofford with the view towards purchasing KIB386 should be modified.

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Moreover, the refusal of the Examiner to permit applicants' counsel to place Wofford on the stand for further interrogation (R.1450) was highly prejudicial to applicants. The Examiner recognized that" . . . There is an extreme element of surprise in the production of this witness and going into this line of questioning" (R.1432). The Commission's staff was well apprised at the pre-hearing conference that this was the kind of information applicants wished to receive in advance of the hearing in order that fair and proper preparation could be made (R.1429-30).

Pinson's testimony that his conversations with Wofford during the months of January - April occurred in 1959, not in 1957, is of crucial significance and can now only be satisfactorily resolved by reconvening the hearing and taking Wofford's further testimony.

9. Although the Commission deemed Pinson Exhibit 37 admitted, the failure to grant the remainder of applicants' Exceptions 42, 43, 44(a), (b), and (c) on the ground that the evidence was subsequently admitted, was erroneous. The refusal of the Examiner to permit witnesses to testify in Tampa, namely: Mr. and Mrs. Charles J. Magee (R.1901, 1907), was not cured by anything which occurred subsequently when the hearing was reconvened in Washington. Similarly, the refusal to permit Pinson to give rebuttal testimony either in Tampa or in Washington (R.1908-9, 1929-30) was never rectified and can now only be done by rehearing. Presumably, had these witnesses been allowed to testify, further evidence favorable to applicants would have been elicited. The mere admission into evidence of Pinson Exhibits 37 and 38, after the hearing was closed, is helpful but clearly does not cure the Examiner's erroneous exclusion, because if, for example, Exhibit 38 had been admitted, counsel would then have developed on the record testimony tending to support applicants' bona fides. As the record now stands applicants have been effectively precluded from putting vitally important evidence in the record.

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10. The Commission's statement in paragraph 9 that Pinson's "assumption of control of KIK578" did not result, as the Examiner found, from Fields' unwillingness to assume responsibility, places excessive weight on the few factors set forth and overlooks many other evidences of control exercised by Fields. Two of these factors cited: "(b) the engineering work therefor was paid for by Pinson" and "(e) the only affirmative act shown to have been taken by Fields was his ordering the station off the air . . ." (emphasis added), are clearly contrary to the great weight of the evidence. The question of payment for the engineering has already been adverted to in paragraph 6 of this Petition.

As to the allegedly single affirmative act taken by Fields, reference is made to the following additional affirmative acts taken by Fields:

(1) "So I would say in round numbers I have invested about \$1,000" in the Tampa pocket paging station (R.945).

(2) On January 28, 1957 Fields filed application with supporting data with the Commission (R.949-50).

(3) On May 27, 1958 Fields requested the Commission to grant him 10 additional days to file additional data "which the engineer is presently preparing" (R.951-958).

(4) Fields submitted additional data to the Commission on June 14, 1957 (R.951).

(5) Fields carefully considered going into the pocket paging business and discussed the matter with Pinson (R.954-5).

(6) Fields having finally decided to make application for a license, "began to make preliminary inquiries in Tampa . . ." (R.956).

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(7) Fields paid income tax on revenue from the station.

(8) The March 17, 1958 letter to the Commission (Pinson Exhibit 2) signed by Fields and Pinson was the combination effort of both and was carefully considered by Fields (R.961).

(9) Fields contracted for the Station's equipment (R.963).

(10) Fields went to Washington with Pinson in April, 1959 (R.966).

(11) Fields made a budget for potential revenue and expenses (R.975).

(12) Fields assisted in preparing exhibits to his application (R.978-80).

(13) Fields made studies relating to rates and tariff (R.981).

(14) Fields personally authorized the Washington engineer Deeters to prepare the required engineering data (R.991).

(15) Fields paid for this work (R.992).

(16) When the transmitter arrived in St. Petersburg Fields refused to accept delivery there and ordered it sent to Tampa (R.1001).

(17) Fields asked Pinson to arrange with Bailey to make the installation (R.1001).

(18) Fields paid Pinson \$741.77 for the transmitter (R.1001).

(19) Fields solicited business (R.1021).

(20) Fields visited the Tampa station and saw to it that requirements of applicable rules were rigidly adhered to (R.1078).

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(21) Fields familiarized himself with the installation (R.1078).

(22) Fields issued instructions to insure that station employees did not "get out of line"(R.1079).

(23) Fields caused a sign to be posted at the control point and to be maintained at all times since the station first went on the air as follows:

"Mr. James C. Fields is the owner of the paging system is admitted to the office at any time and his instructions on the paging system carried out to the letter" (R.1043, 1080-1; Fields' Exhibit 2, R.1815-16).

(24) Fields filed or caused to be filed with the Commission a form of invoice for use in billing customers indicating Fields was the owner and containing the legend in Fields' handwriting "In use since April, 1955" (R.1819-20).

(25) Fields made general inquiries concerning the need for selective signaling service in the Tampa area but found no desire for such service (R.1834-5).

11. It is respectfully urged that on reconsideration and rehearing the Commission's conclusion in paragraph 10 of its Decision that Fields', original application pertaining to control, the reiteration of control in his letter to the Commission on May 27, 1957, the contract dated March 13, 1958 and affidavits of March 17, 1958 relating to ownership and operation of the station prior to November, 1927 are all false, will be found to be unwarranted. The Examiner had the opportunity of listening to the testimony and of watching the demeanor of the witnesses and concluded:

"Considered as a whole, the evidence is not sufficiently persuasive to conclude that these documents were in fact back dated in order to mislead and misinform the Commission. Nor is the evidence sufficiently persuasive to conclude

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that the circumstances surrounding the filing of the application for station KIK578 were other than as testified to by Mr. Fields. He candidly admitted that he thereafter lost interest in the project, that he was sorry he went into it and was satisfied to have Mr. Pinson operate it. It accordingly is concluded that the statements of Mr. Pinson and Mr. Fields dated March 17, 1958 insofar as can be ascertained from the record herein, were substantially true and correct when made."

Based on the foregoing applicants earnestly petition the Commission as follows:

- (1) To give reconsideration to the record already made herein;
- (2) To order a rehearing limited to the matters involved in the conclusions reached in paragraphs 9 and 10 of the Commission's Decision;
- (3) To re-open the proceeding to permit applicants to place in the record rebuttal evidence and testimony which they were precluded from doing at the previous hearing in Tampa and Washington.

Petition for Stay

Applicants pray that, pending the Commission's decision on the foregoing Petition for Rehearing and Reconsideration, the effectiveness of the Commission's order to applicants to terminate operations of Stations KIB386, KIG289, KIG843 and KIK578 be stayed.

In support of said petition for a stay, applicants set forth the following:

1. The failure to issue a stay order would cause immediate, irreparable loss, damage and inconvenience to the public in

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the St. Petersburg and Tampa, Florida areas. See paragraph 11 of the Examiner's Decision: "Refusal to grant the applications . . . will unquestionably result in a loss of important communications facilities to the public. Although it is reasonable to expect that others will ultimately step in and provide these services there is no assurance that such will occur and if so, at what point in time."

2. Petitions for rehearing and reconsideration, although not a condition precedent to appeal, should be encouraged to afford the Commission an opportunity to correct any errors, to place all pertinent evidence in the record and in general to reach a fair and just decision without resort to the courts.

3. Irreparable loss would ensue to applicants if they were required to terminate operation of their stations: customers would be lost and never regained and applicants' business would be irrevocably ruined. In the absence of a stay, even the ultimate vindication of their position would be utterly meaningless, empty and futile.

4. The issuance of a stay order is essential to maintain the status quo.

5. Issuance by the Commission of a stay could not possibly result in any harm or damage to the public.

6. Assuming a subsequent judicial review in which applicants would be successful, the power of the Court of Appeals to issue a stay order would be an empty mockery to applicants and an idle ceremony if in the interim the status quo were already irreparably changed.

Respectfully submitted,

Charles P. B. Pinson, Inc.

James C. Fields

Applicants

BY /s/ Mayer U. Newfield

Attorney

1119 First National Bank Building
Birmingham 3, Alabama

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Certificate Of Service

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MEMORANDUM OPINION AND ORDER

By the Commission: Commissioners Minow, Chairman; Lee and Henry not participating.

1. The Commission has before it for consideration a Petition for Rehearing, Reconsideration and Stay filed August 28, 1962 by Charles P. B. Pinson, Inc., and James C. Fields, 1/ and an opposition thereto, filed September 12, 1962 by the Commission Common Carrier Bureau. The petition is directed to the Commission's Decision, released July 30, 1962 (33 FCC 213), which denied petitioners' applications in the Domestic Public Land Mobile Radio Service, the Commission concluding that Pinson and Fields lack the requisite character qualifications in view of their engagement in a course of action by which Fields applied and received authorization for Station KIK578 in Tampa upon representations to the Commission that he would control such station, when in fact it was the continuing intent of the parties that Pinson would operate and control the station as an adjunct to his existing stations and answering service.

2. To the extent that the petitioners seek reconsideration, they do no more than reargue their exceptions to the Initial Decision. The Commission already has given full consideration, in its Decision, to such exceptions, and it would be fruitless to repeat here the justification for their denial.

3. The request for reopening of the record is based on petitioners' claim that they have been precluded from putting evidence into the record "tending to support applicants' bona fides." This claim arises from a confused procedural situation resulting from an agreement

among counsel during the portion of the hearings held at Tampa. After each of the parties had presented its direct case, counsel for Rosenson, with a view to absenting himself from further hearing sessions in Tampa, obtained an agreement from counsel for Pinson and Fields that he had nothing further to offer there in rebuttal to Rosenson's direct case. The following day, counsel for Pinson and Fields attempted to introduce engineering evidence relating to corrective action taken upon Fields' station, and to the height of the antenna of that station. The Examiner ruled that such was rebuttal evidence relating to the Fields-Rosenson comparative hearing, and held that its admission would violate the agreement among counsel. Counsel for Pinson and Fields then sought a brief recess to obtain evidence relating solely to Pinson's stations, the Examiner denying the request on grounds that it would further delay an already drawn-out proceeding. However, the Examiner repeatedly advised counsel that such evidence could be introduced at the subsequent portion of the hearing to be held in Washington. Counsel for Pinson and Fields, however, did not avail himself of the opportunity thus presented by the Examiner, nor did he make an offer of proof concerning such evidence.

1/ The portion of the petition requesting a stay was granted by Commission Order released August 29, 1962 (FCC 62-907).

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4. The Commission, in ruling upon petitioners' exceptions 42, 43, and 44(a)-(c), admitted Pinson Exhibit 37, stating that the Examiner's rejection thereof was based upon an unwarranted extension of the agreement among counsel. Such ruling manifests an abundance of leniency, for that exhibit, too, could have been reintroduced at the Washington sessions under the ruling of the Examiner. It is clear from a reading of the record that petitioners were only temporarily precluded, at the Tampa hearing, from introducing certain evidence. Whether such was proper or improper is of little moment, for their

failure to avail themselves of the opportunity to present such evidence subsequently operated to purge the error, if any, in the Examiner's prior ruling. Therefore, the request for reopening of the record will be denied, the petitioners having been afforded ample opportunity to present their cases on the hearing record.

5. In its Order released August 29, 1962 (FCC 62-907), the Commission stayed the effective date of its Decision until 3:00 a.m. Eastern Standard Time on a date thirty days following the release of the instant document. In order that there be no doubt as to the termination date of the licenses in question, we will, infra, set a date certain for their expiration, and the Order released August 29, 1962, is superseded hereby.

ACCORDINGLY, IT IS ORDERED, This 24th day of October, 1962, That the Petition for Reconsideration, Rehearing and Stay, filed August 28, 1962, by Charles P. B. Pinson, Inc., and James C. Fields IS DENIED; and

IT IS FURTHER ORDERED, That in order to permit Charles P. B. Pinson, Inc., and James C. Fields to wind up their affairs, authorization to operate Stations KIB386, KIG289, KIG843 and KIK578 shall terminate at 3:00 a.m., EST, on November 30, 1962.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple

Acting Secretary

Released: October 25, 1962

[1]

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

(Prehearing Conference)

Washington, D. C.

November 16, 1960

* * * *

[3]

The above-entitled matter came on for prehearing conference before Forest L. McClenning (The Presiding Examiner) in room 1346 New Post Office Building, Washington, D. C., at 10:00 o'clock a.m.

* * * *

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PROCEEDINGS

PRESIDING EXAMINER: We will be in session.

This is a prehearing proceeding called by me as presiding officer with regard to the applications of Charles P. B. Pinson, Inc., in Docket Nos. 13579 through 13585 and the applications of James C. Fields, in No. 13586, and the application of Alan H. Rosenson in Docket No. 13587. A copy of the order designating me as the presiding officer appears in these dockets.

This prehearing proceeding has been called this morning, I think, primarily to resolve nothing more than possibly the order of procedure in the cases, future dates for the hearing and future locations of the hearings.

MR. ENDE: If I may, Mr. Examiner--

PRESIDING EXAMINER: I would like, first, to ask counsel to enter their appearances at this time.

MR. NEWFIELD: Mr. Examiner, my name is Mayer U. Newfield, 1119 First National Bank Building, Birmingham 3, Alabama. I represent Charles P. B. Pinson, Inc., and James C. Fields in these proceedings.

MR. FIELDS: Samuel Miller and Mark K. Fields, for Alan H. Rosenson.

MR. ENDE: Asher H. Ende, for the Chief of the Common Carrier Bureau, Federal Communications Commission.

PRESIDING EXAMINER: Mr. Ende, in view of the fact that I know you are completely familiar with commission procedures

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and I am also aware that Mr. Fields is equally familiar with that field, however, I would like to hear suggestions from you first, with reference to the procedure to be followed. By that I note that we recognize these are 309 (b) hearings, and the burden of proof rests on the applicant. On the other hand, I think, normally in these proceedings, the burden of proceeding with the evidence is initially assumed by the Commission. Is that your view of this proceeding.

MR. ENDE: If you will look at the issues in this proceeding they are in the nature of matters directed to the applicants. It is our feeling here that orderly procedure would best be accomplished by permitting or requiring the applicants to make their cases. One of the applicants is a commission licensee--he is seeking a renewal of certain licenses and other licenses, and I think that he should be the one who should be allowed to set the tone and tenor so to speak, to show his technical--character qualifications, to explain in whatever light he desires to put forward in this record the various statements and to put forth all of the evidence that he thinks can help him in connection with these matters.

This is not a revocation proceeding, where the commission's staff is acting as prosecutor.

I think it would be a little bit unfortunate if we were to attempt to go first. I think it would be much better and

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fairer and would lead to a much more orderly record if we would permit

Mr. Pinson and Mr. Fields to the extent necessary to put in their cases. We would then proceed to test them with cross examination and to put in such evidence as we believe to be pertinent, after we have had an opportunity to evaluate what Mr. Pinson has to say and how it stands up under cross examination.

PRESIDING EXAMINER: Mr. Newfield.

MR. NEWFIELD: Mr. Examiner, I think that I can go along with the suggestions made by Mr. Ende to a point, that is to say, with reference to a primary showing as to qualifications, technical or otherwise. However, I think when you get to the realm of what we might term "charges" made by the commission as to possible violations of law there, it would seem to me, that the defendant, so to speak, either Mr. Pinson or Mr. Fields, in each instance is entitled to know what it is that he is charged with or the corporation is charged with having committed. For example, included in the order are charges of violating certain wage and hour provisions and even income tax laws. When we reach that point of proof I believe virtually all the two licensees would have to do would be to take the stand, to say that they were not aware of any violation of law. At this point I suppose a prima facie showing would have been made by the licensees on those two issues. If the commission has

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something in mind and I presume they must have something specific-- then it would be my feeling that the burden at that point of the proceeding would be upon the commission to say just what it is they are accusing these licensees of having done, or what evidence they may have that is in the nature of, at least, a showing of some such violation.

There may be other issues similar to that, but those few I think are readily apparent.

And I may say for the record that I am not aware, after talking with Mr. Pinson, who is President of the corporate licensee and who is operating the Fields Station under contract of any income tax violation.

I think, perhaps, one of the purposes of this prehearing conference would be to determine just what that issue is -- what it is that we are required to meet.

PRESIDING EXAMINER: Does that conclude your statement?

MR. NEWFIELD: Yes.

PRESIDING EXAMINER: Mr. Fields.

MR. FIELDS: Mr. Examiner, there were two separate commission orders specifying the issues in this proceeding.

One order relates to the applications of Charles P. B. Pinson, Inc., and Mr. Newfield has been talking about that order. Alan H. Rosenson is not a party to that order.

The other order, Docket No. 13586, concerns the applications at Tampa, Mr. Rosenson and Mr. Fields, which may or

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may not be mutually exclusive.

So I think I should limit my remarks to the order in which Mr. Rosenson's name appears.

The issues in this order do not include issues of income tax violations and wage and hour law violations, and those other charges of the sort that Mr. Newfield referred to. So I think that is between Mr. Newfield and Mr. Ende.

So far as this order is concerned in Docket No. 13586, concerning the application of Mr. Fields and Mr. Pinson, I think that the issues relating to these applicants are straight forward and not in the nature of charges.

So far as this order is concerned I agree with Mr. Ende that the applicants should produce evidence affirmatively on the issues which involve them. We could just go down through the list "A" through "R" and

it is quite obvious, in the case of each issue which applicant is concerned there.

And so far as Mr. Rosenson is concerned we are ready to go forward, to present evidence on the issues in this order which concern Mr. Rosenson. There are several here which concern Mr. Rosenson.

MR. NEWFIELD: May we go off the record just a moment?

PRESIDING EXAMINER: For what purpose, please?

MR. NEWFIELD: Counsel made a reference to issues "A" through "R". I would like to inquire what document he is referring to.

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PRESIDING EXAMINER: He is referring to commission's order in the Fields case. The release is headed "FCC sixty-six four six, mimeo number 88811. Do you have a copy of that order?

MR. NEWFIELD: Yes, I have it.

MR. FIELDS: To sum up in one sentence, this order, so far as I am concerned, does not contain any issues in the nature of charges in which the Common Carrier Bureau would be required to proceed with the evidence. So far as the issues in this order are concerned I would think each applicant would proceed with presenting evidence on the issues which concern him or it--each of the two applicants. And Mr. Rosenson is prepared to proceed when and where ordered.

PRESIDING EXAMINER: Thank you.

We, unquestionably then, will in the Fields docket have the applicant proceed initially with the burden of proof.

In the Pinson docket, Mr. Ende, I wanted to point out certain of the issues, and I was wondering if your statement did go to all issues involved in those dockets.

MR. ENDE: As to No. 7, we will be very happy to proceed in the manner that Mr. Newfield suggested. I might point out that even there the information is such that is particularly within the knowledge of Mr. Pinson and the corporate entity. They, certainly, know whether authority

has made such a finding. However, we will not be disposed

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to argue or quibble about that. We will present for the record the evidence available and advise the parties, or if Mr. Newfield would like, we would be very happy to advise him of the nature of this, then he would be in position to present his case in a single rather than a chopped-up fashion. I think that would help for an orderly record.

For instance, for Mr. Pinson to come in and tell his story, that is, to let him get on the stand and tell part of it, then somebody from the commission to tell part of it and to disorganize himself, so that it makes a combination of rebuttal and direct statement, would not be orderly. If we can help counsel for Mr. Pinson by informally advising him of where we stand on these things, we will be very happy in the interests of orderliness to do that, so as to reach a better understanding.

PRESIDING EXAMINER: What about issues four and six?

MR. ENDE: On those Mr. Pinson, certainly, knows the representations which he made in connection with the grant of the applications given to him. If Mr. Pinson believes those representations are correct he can get on the stand and say so. If he has additional evidence, besides the vocal testimony under oath, that should be given, and that could then be tested. That is, the nature of it.

These are all things that Mr. Pinson himself can come forward with. He, certainly, is privy to that knowledge.

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Here we are not saying that it is something outside of what Mr. Pinson did.

PRESIDING EXAMINER: The thing that is disturbing me, and I think it could, also, be handled between counsel as effectively as through procedures followed in the hearing, are the specific representations that you

have in mind. I think if he is informed of those, obviously there are a number of representations made in any application, but it seems to me like you do not desire to take up everything that appears in the application, when in fact, you are requesting possibly only 20 per cent of the statements made, that it would otherwise be a waste of time in the proceeding.

MR. NEWFIELD: That is precisely our position, Mr. Examiner.

MR. ENDE: The basic issue here relates to the nature and the extent of the ownership or control which Mr. Pinson may have exercised over the license granted to Mr. Fields, and their representations refer to two types. First of all, documentary representations made in the application. I believe that Mr. Pinson should be afforded the opportunity to say, "All I said there is true" or, "I was mistaken with respect to A, B, C, or D, and I would like to amend it in the following fashion" and proceed from there.

I am trying to avoid here being forced in to an adjudicatory or prosecutory position. If Mr. Pinson satisfies the

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situation I think it would make for a much better record, instead of having us come forward and in absence of saying, "You lied about this data" or, "The other thing," when he may have an explanation which we may not have heard yet.

PRESIDING EXAMINER: That is the reason I would suggest that could be resolved between counsel as to the specific representations which this issue encompasses.

MR. ENDE: We will be very happy to talk to counsel and see what can be done. I hope that we can satisfy him in this matter, that is, on this matter. We want to elicit the information for the record and let you, if you get it, see whether it is true or untrue, not come in here and automatically saying, "Mr. Pinson, before you heard him, has already lied about A, B, C, and D."

PRESIDING EXAMINER: I think we all recognize that fact, Mr. Ende. I am simply trying to bring it down to a point where the evidence introduced in this proceeding will be related specifically to those sections of the applications that are really material. There obviously are going to be portions of it that are not.

MR. ENDE: We will be happy to work with counsel, and to do our best to satisfy him, but we would like to make it clear that we believe that there is an obligation on Mr. Pinson, originally, to indicate for the record that he stands behind what he has said or how he would like to

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modify it, and then we will indicate to him those specific areas where we have problems, if that would be satisfactory.

PRESIDING EXAMINER: Do you have any comment on the other one I mentioned which was issue No. 6, relating to section 310 (b) of the Communication Act and Section 21.19 (h) of our rules in relation to Station KIK578. I have in mind there, Mr. Ende, what particular actions taken were in question under that issue.

MR. ENDE: This, again, is part of the same transfer. It gets down to the situation of various acts and statements of Mr. Pinson which may or may not constitute a transfer of control and ownership without authorization from the commission.

Again, I might point out for your benefit, sir, that these things have not sprung full born. Mr. Pinson was advised, at least twice, of various problems that did exist and specifics were pointed out by commission staff members who made the investigation. There has been an interchange of letters, I believe, which again indicated the nature of the problems. Now if counsel would like to discuss it further with us, those matters, we will, certainly, be glad to cooperate with him.

PRESIDING EXAMINER: By that you mean through a commission proceeding?

MR. ENDE: Beg pardon?

[14]

PRESIDING EXAMINER: You mean, by a commission proceeding?

MR. ENDE: Definitely. I was referring to Mr. Newfield's statement. This is his first case before the Federal Communications Commission. No intention to do otherwise.

PRESIDING EXAMINER: As I understand your statements, Mr. Ende, you are willing to consult with Mr. Newfield and attempt to satisfy his inquiries, to know exactly what his burden of proof is going to be?

MR. ENDE: Yes.

PRESIDING EXAMINER: And possibly, then he can put his entire case in and the commission would rely principally on cross examination, or possibly, introduce evidence of its own.

MR. ENDE: Yes, depending upon the nature of the case that Mr. Newfield puts in. Obviously, until we know exactly what Mr. Pinson has to say on the record and to see how it stands up under cross-examination, we do not know the nature and the extent if any at all, of the rebuttal testimony in this matter.

PRESIDING EXAMINER: Well then, at this point--

MR. ENDE: May I, sir, call attention to a typographical error in the document No. FCC 60-645, in issue No. 6, which we were discussing. It is in the third line, towards the end, and refers to Section 21.19 (h) and it should be 21.29. It is correct in the second document, that is, the Fields Document. I call attention of counsel to that. It should be

[15]

21.29. That is what was intended, because I think that section 310(b) indicates that it would be that section.

PRESIDING EXAMINER: You are not raising any issue as to that point, Mr. Newfield?

MR. NEWFIELD: No, sir.

PRESIDING EXAMINER: Thank you.

MR. NEWFIELD: I was aware that it must have been a typographical error.

PRESIDING EXAMINER: Well, at this point then we will go to the question of hearing dates, leaving the matter as to the method of proceeding initially to consultations between counsel to see if it can be worked out to their mutual satisfaction; if not, of course, we would have to call another conference and the examiner would establish the procedures to be followed by formal ruling.

The commission's order of designation specifies that the original hearing is to commence in Washington, D. C. and is to be held at subsequent dates at such points as the examiner may specify. I would like to inquire as to the position of counsel, first, of the locations for the hearing; and, second, prospective dates for the commencement of the proceeding. Mr. Newfield.

The reason I am asking you first is because you do represent the applicant in this proceeding.

MR. NEWFIELD: Thank you, Mr. Examiner.

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[21]

MR. ENDE: * * * *

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If I might have your indulgence, sir, there are a few other matters involving these applications for which I think could well be ironed out. I should like to call attention to all of these. We try to organize them in an orderly fashion step by step and I think that it might expedite matters to go into them.

PRESIDING EXAMINER: You may.

MR. ENDE: The first are directed to the Pinson matters which do not involve Mr. Fields or Mr. Rosenson. I would like to call counsel's attention to them.

The application in Docket No. 13579, which is File No. 683-C2-P-59, which requests a construction permit to change the location and make antenna changes in Mr. Pinson's station KIG289, which is a 2-Way station in St. Petersburg. The location and change involve the use of a TV antenna, and this gives rise to certain problems in connection not only with our service, but, also, in connection with the broadcaster Bureau service, and a modus operandi has been worked out between bureaus which is followed when there is a grant without a hearing. Obviously, since this is an application proceeding and it is not a separation of function case, the initial decision will be made by the hearing examiner, the final decision by the commission and these are, therefore, in the nature of advice to the hearing examiner of the procedures which have been worked out and which we are advised

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by our engineers, both in our own organization and in the broadcast bureau are essential to preserve the integrity of the television service, as well as this service. Normally, a condition is put into the grants involved here for the two-way service which reads something like this:

"Subject to the condition that prior to commencement of construction, the licensee of station WTSP parenthetically that is the television station whose antenna Mr. Pinson intends to use--be obtained from the Federal Communications Commission authority to determine the operating power of WTSP by the indirect method and that upon completion of construction the antenna and common point resistances shall be remeasured and the results submitted with Forms 302 as a request to determine power by the direct method, if the resistances are changed from the present WTSP license. If the resistances remain unchanged, the licensee of WTSP--parenthetically I am advised that it is a broadcast station, not a

television station--shall resume the direct method and notify the commission accordingly. All pertinent meter readings, including field intensity at each monitor point, relative to such determinations of WTSP radiation system characteristics shall be supplied the commission by the WTSP licensee.

"Further, the RF power output of the base station transmitter shall not exceed 152 watts. (That is base station KIG289)"

In addition to that there is usually a further condition

[24]

put in as follows:

"This authorization is granted subject to the condition that, upon the completion of construction, the output power of the transmitter shall have been adjusted to the value indicated in the construction permit and the actual readings of input voltage and current to the plate of the final RF amplifier stage, together with the method employed in adjusting the transmitter power output and the identity and qualifications of the person making such adjustment, shall be submitted as an exhibit to the covering license application."

That covers the situation with respect to the two-way signalling of Mr. Pinson.

Now, we also, have an application in Docket No. 13580, which is file No. 684-C2-P-55, which requests a construction permit to change the location and make antenna changes in Station KIG843, which is a one-way signalling of Mr. Pinson.

Here again this is in St. Petersburg. And here again it is proposed, by Mr. Pinson, to move his location and use the antenna of the same broadcast station, WTSP. And in essence the same condition that was put in previously with respect to the two-way--the first part of it--would be applicable here, that is, the measurements to be made by WTSP and the difference in resistances and the like stated previously. That is a protection of the integrity of both the broadcast service and the mobile service.

[25]

As I said previously this is what we are calling the attention of the hearing examiner to and what from an engineering point of view is required, I understand.

Since this is not a hearing it might simplify matters if the parties are in position now or would undertake to determine by consultation with their professional, technical experts, whether or not they would stipulate to that.

PRESIDING EXAMINER: If they will stipulate you are willing to accept the grant subject to these conditions?

MR. ENDE: Otherwise it might be necessary to call technical witnesses to explain why this had to be done. We might have the broadcast bureau in opposition to the grant. As I state, there is nothing new about that. This is proforma for a grant made without hearing. If Mr. Newfield would then undertake to determine this and to advise us as soon as he can whether he would stipulate at the opening of the hearing, fine, or whether we have to go to the other proceeding--we would appreciate it.

PRESIDING EXAMINER: Mr. Newfield, it may sound very complicated, but I will assure you they are normal engineering conditions in the situation of this type, and you will find that a very, very large number of commission grants are made subject to certain specified engineering conditions which involve the making of tests to satisfy the commission. In this case so that both the television station and the one-

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way and two-way signalling stations are going to be operated properly.

MR. NEWFIELD: You say television station?

PRESIDING EXAMINER: Both the television station and--

MR. NEWFIELD: It is a broadcast station.

MR. ENDE: It is a broadcast station-- I misspoke--it is not television.

PRESIDING EXAMINER: I see. I understood you to say "television".

MR. ENDE: I did, sir. Then I was corrected. Originally it was a television station, that is, our information that I received was that, but it is a broadcast station. It is the same. It is an AM station.

PRESIDING EXAMINER: Both the standard broadcast station and the one-way and two-way signalling stations are radiating their electrical energy in the pattern which is required, that is, it is for that purpose, because you have to have them all operating in that manner to protect the other services.

MR. NEWFIELD: Let me state, Mr. Examiner, I would be glad to consult promptly with my clients and will undertake to obtain the information which is desired as promptly as possible and to make whatever stipulation is necessary or convenient to counsel, so that this does not become an issue in the hearing.

PRESIDING EXAMINER: The only stipulation that can be

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drawn would be that the applicant is willing to accept the grant subject to the specified conditions.

MR. NEWFIELD: I understand. May I inquire further?

PRESIDING EXAMINER: It would be simply a matter of talking with your technical advisor and engineer and asking if he realizes what is involved.

MR. NEWFIELD: May I inquire if I can obtain from counsel, the staff, some indication of precisely what it is that he would like us to obtain?

PRESIDING EXAMINER: Could you draw a proposed stipulation, Mr. Ende, make it available to Mr. Newfield at your convenience?

MR. ENDE: The language is as read into the record.

MR. NEWFIELD: How quickly will that be available without extra cost?

PRESIDING EXAMINER: We will go off the record for the answer.

(Off the Record)

PRESIDING EXAMINER: We will at this point return to the record. Let the record show that counsel has been furnished the requested information.

MR. ENDE: If I may proceed, sir.

PRESIDING EXAMINER: Yes.

MR. ENDE: The next is addressed to the Rosenson-Fields competing applications. Since they are asking for the same frequency, in the same city, I wonder if the two counsel would

[28]

undertake to stipulate that they both cannot operate simultaneously co-channel. If that is so, I think a large element of the nature of proof would have to be removed in that they are actually asking for a mutually exclusive application.

MR. FIELDS: Could we go off the record?

PRESIDING EXAMINER: For what purpose?

MR. FIELDS: Can we go off the record to explore a stipulation?

PRESIDING EXAMINER: You may for that purpose.

(Off the Record)

PRESIDING EXAMINER: We will at this time return to the record. And while we were off the record counsel did discuss informally the possibility of entering into stipulations and agreements with reference to the engineering testimony.

MR. ENDE: As I understand it there is a possibility that a stipulation will be reached on the mutual exclusivity. If such a stipulation is reached, then we feel that the following additional stipulations would be appropriate to expedite proceedings.

First of all, not later than a date to be fixed, each of the applicants in Docket No. 13586 and 13587, which are the Fields-Rosenson applications shall submit to commission legal counsel and to the hearing examiner and to each other, a geographic portrayal depicting his exact station location, the location of his station's 43 dbu service contour, and a

[Tr. 29]

computation of the square miles and population within the 43 dbu contour. Secondly--

PRESIDING EXAMINER: And those computations could be made by commonly accepted engineering methods?

MR. ENDE: Yes, sir. I come to that later, sir.

Secondly, that the aforementioned portrayals of station location and field intensity contours shall be made on a contoured topographic map or maps, preferably the United States Geological Survey quadrangles or maps of comparable detailed accuracy for the areas involved.

Thirdly, the locations of the 43 dbu service contours of field intensity shall be determined in accordance with the methods set forth in the commission's T.R.R. Report No. 4.3.8 (Revised August 12, 1954) by William C. Boese, entitled, "A Summary of the Technical Factors Affecting the allocation of land mobile facilities in the one hundred and two to one hundred fifty eight megacycle band".

We have available here copies of this which we will be glad to give to counsel. And I will ask that be done now.

For this purpose, the F (50, 50) radio wave propagation chart for 63 megacycles (TV Channel 2) contained in section 3.699 of Part 3 of the commission's rules for shall-be employed. The field intensities indicated by this chart shall be scaled downward by a factor of six decibels to compensate

[Tr. 30]

for the antenna height-gain difference expected to be encountered between receiving antenna height of thirty feet for which the chart is drawn and the six foot receiving height normally used in the one-way signalling service.

Furthermore, not later than the same date mentioned previously, the applications shall additionally submit to the parties afore-mentioned computations of the square miles and population contained within each

applicant's 43 dbu service contour. The computation of square miles shall not include the areas covered by lakes, harbors, or other sizable bodies of water.

Fifth, the computation of population shall be based on the United States Bureau of the Census Reports for the year 1960. I've preliminary report PC (P1)-11 or Advance Report PC (A1)-11.

In this connection I would like the parties to note that Advance Report PC (A1)-11 will not be available for about 3 weeks from this date.

Those are the nature of the stipulations which I think will make relatively simple the engineering status that will be required in case it is stipulated that the applications are mutually exclusive.

Now if the parties do not stipulate that, other procedures will be necessary, of course, to prove the engineering and there we feel that the following type of stipulation will be

[Tr. 31]

appropriate.

Not later than the date to be fixed, each of the applicants in Docket No. 13586 and 13587 shall submit to commission counsel and the hearing examiner, and to each other, a geographic portrayal depicting his exact station location, the location of his station's 43 dbu service and interference contours, and the extent of harmful interference, if any, in the area within the 43 dbu contours, which may result from simultaneous co-channel operation of his station and the station of the other applicant.

The afore-mentioned portrayal shall be made on contoured topographic maps, preferable U.S. Geological Survey quadrangles or maps of comparable detail and accuracy, for the areas involved.

Third, the locations of the 43 dbu service and interference contours of field intensity in the geographic areas of co-channel harmful interference shall be determined in accordance with the methods set forth in the commission's T. R. R. Report No. 4.3.8 which I described previously and which title I gave. And for this purpose, the F (50, 50) radio wave

propagation chart for 63 megacycles (TV Channel 2) contained in Section 3.699 of Part 3 of the commission's rules and the F (50, 10) radio wave propagation chart for TV Channel 2, which is contained in the commission's Sixth report and Order in Docket No. 8736, et al, shall be employed. The

[Tr. 32]

field intensities indicated by those charts shall be scaled downward by a factor of six decibels to compensate for the antenna height-gain difference expected to be encountered between receiving antenna height of thirty feet for which the charts are drawn on the six foot receiving antenna height formally used in the one-way signalling service.

Fourth, on the date, or not later than the date to be specified, the applicants shall additionally submit to the parties afore-mentioned the following computations:

First, the square miles and population contained within each applicant's 43 dbu service contour.

And, second, the square miles and population contained within the harmful interference areas if any, which are within the 43 dbu service contours of each station.

Again, the computation of the square miles shall not include the areas covered by lakes, harbors, or other sizable bodies of water. The computation of population shall be based upon the United States Bureau of the Census Reports for the year 1960, which I described previously.

And that will be it in that case.

I think those are the procedures that should be followed in it. Of course, it is clear that the studies there would involve all of the information with respect to interference from simultaneous co-channel operation.

I have a few other matters, if I may take them up,

[Tr. 33]

which involve things which have come to the attention of commission

counsel, with regard to which we have already advised counsel for Mr. Pinson.

I think for the purposes of the record, in order that it may be clear, that we are not trying to surprise anybody. I might mention them now.

The first of these relate to certain accounting information and balance sheets regarding which we have had correspondence with Mr. Pinson. Copies of the latest correspondence have been supplied to counsel for Mr. Pinson for his information and, of course, have been mailed to his client. And we hope that matter can be completely straightened out, so that nothing further will be done in the course of this hearing. However, we want to put the parties on notice that we reserve the right to raise the matter if Mr. Pinson fails to respond satisfactory to the requests. As I said, we are trying in each one of these instances to keep counsel fully informed so he will know exactly what the commission counsel has in mind.

I think, that is, also in line with your desire that we informally let him know.

PRESIDING EXAMINER: That is correct.

MR. ENDE: The other matter relates to a proceeding which took place in Florida before the Florida Railroad and Public Utilities Commission. They issued an order on

[Tr. 34]

October 27 which reaffirmed the order which had previously been issued August 16, both in 1960, where it was found that under the Florida Statutes, that as long as the Pinson Corporation interconnects its radio facilities with those of the wire line telephone company, it (Pinson) or the Pinson Corporation, is affording, within the state, a telephone business on for hire basis which under the laws of the state must be granted a certificate of convenience and necessity before it, the business, can be engaged in.

It is our advice or we have information to the effect that Mr. Pinson at the present time has no such certificate. Under these circumstances the commission authorized the wire line carrier to disconnect so much of its facilities as were interconnected with Pinson's radio service.

Now we would like to notify counsel for Mr. Pinson that at the opening of the hearing we shall be advised on the record whether or not the interconnection has been terminated and whether or not he has a certificate and, therefore, is permitted to continue.

PRESIDING EXAMINER: In the event that it has not been terminated?

MR. ENDE: Yes.

The reason for that is that the rules of this commission, particularly, section 21.15 (c) (4) provide as follows:

"Where required by applicable local law, a certified

[Tr. 35]

copy of the franchise or other authorization issued by appropriate regulatory authorities. If no such local requirement exists, a statement to that effect shall be included in the application."

This is what this rule indicates in detail was to be shown on the application and there is an application form for it. So that is a matter that we would like to put counsel on notice on.

Then we come to what I believe is the final one, that is, we would require the applicant Pinson to make one further stipulation, if his application in Docket No. 13581 for Clearwater is granted, that is, that the applicant will accept the grant for this station and for the St. Petersburg station KIG843, Docket Nos. 13580 and 13585, each subject to the condition that these stations will be provided with interlocking means of positive lockout control whereby either station can be made to transmit while the other station is transmitting. This, I believe, is required because he is seeking to provide service on the same channel, and this is a means which we think can be worked out to avoid harmful interference between the two. And as a matter of fact, Mr. Pinson has proposed that.

He is aware that operating on the same channels so close geographically it could give trouble.

We would further require that the applicants stipulate that he would accomplish this lockout by involving the use

[Tr. 36]

of a leased wire line circuit interconnecting the transmitting facilities of the St. Petersburg and Clearwater stations; or,

Alternatively, a system of radio monitoring whereby a monitoring receiver at Station A (Used for monitoring station B) locks out the station's A transmitter to prevent transmission while station B is on the air and vice versa. In such an arrangement it will be necessary for the monitor receiver, which monitors station B from the location of station A, to be disabled only while station A is transmitting, and vice versa.

And finally, it should be stipulated that if a construction permit is issued the application for license to cover such construction will specify in detail the exact manner with which such conditions will be met so there is not any interference from his operation, one to the other.

And, finally, we would like to have it stipulated that if authorization is issued for the Clearwater station in Docket No. 13581, the applicant will employ frequency measuring equipment which complies with the requirements of Sections 21.101 (a) and 21.102 of part 21 of the commission's rules, and that proof thereof shall be submitted in the application for license to cover said construction. That is, of course, a stipulation that he will comply with the requirements of our rules to prevent, again, unnecessary testimony and

[Tr. 37]

unnecessary work.

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[Tr. 44]

MR. FIELDS: * * * * *

The application in Tampa of Mr. Field and Mr. Rosenson is mutually exclusive. I do not that there is any question about that. And if the application of Mr. Fields should fail for that reason and no other, then that of Mr. Rosenson's

[Tr. 45]

would, probably, be granted. I think that he otherwise qualifies, except for the mutual exclusivity.

There is no issue that raises any question about that. So in view of the fact that Mr. Rosenson has an interest in attempting to show that Mr. Fields is disqualified that will, probably, determine whether Pinson, Inc., is qualified. I think that the interconnection is obvious.

I think it would be unjust for the examiner to say that a party in this consolidated proceeding cannot participate in some phase of the evidence and cross examination and rebuttal evidence which might ultimately be a decisive on his own application. That I think would be unjust.

Besides that, I think the question raised by Mr. Newfield is premature because what we decided this morning is that each will introduce evidence and if at any time I should attempt to introduce evidence relating to issues in Dockets No. 13579 through 13585--or if I should attempt to cross-examine witnesses who are concerned with the issues only in that order then Mr. Newfield can object at that time and the examiner will rule correctly. I, certainly, do not see that Mr. Newfield has to know today how the examiner is going to rule in that hypothetical instance in order to proceed with his preparation now for the hearing, because I do not think that the proof that would be adduced at the hearing on the issue relating to his applicants depends upon whether

[Tr. 46]

or not I am going to cross-examine or offer rebuttal. I cannot see that

information is needed at all today. I think it is premature.

PRESIDING EXAMINER: Mr. Ende.

MR. ENDE: I am inclined to agree with Mr. Fields. It appears to me that if you look at the two orders, the Pinson order issues are repeated in the comparative Fields-Rosenson order issues.

I would agree with Mr. Newfield to this extent, to the extent that if there are issues in the Pinson order which relate purely to Pinson and not to Pinson and Fields jointly, there might be some problem, but anything that affects the interrelationship between Pinson and Fields and the issues primarily as I read them upon the record that a prima facie for Counsel Fields as distinguished from Applicant Fields for his questioning. And if any question is out of line objection can quite properly be made and you can rule.

I might point out that issue No. 7, referring now to the Pinson order if Mr. Pinson is, in fact, without in any way involving Mr. Fields, in violation of a federal statute on the Pinson operation, not the Fields operation in respect to wages an hour, I will feel that Mr. Newfield might raise objection to Counsel Fields pursuing that, but anything at all that involves the interrelationship between the two, I think, is in an area for Counsel Fields to ask questions,

[Tr. 47]

themselves are proper.

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[Tr. 50]

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Tampa, Florida

February 20, 1961

* * * *

[Tr. 52]

The above-entitled matter came on for hearing before Forest L. McClenning (The Presiding Examiner) in Room 403, U. S. Post Office Building, Tampa, Florida, at 10:00 o'clock a.m.

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[Tr. 64]

MR. NEWFIELD: * * * * * I will also state for the record that in the same conversation

[Tr. 65]

Mr. DeVore, after telling me that he had no additional--
I withdraw that.

I asked Mr. DeVore if he could give me further specifications and particulars about what issues we would be required to meet. And the only information I received from him was the following: he referred me to Wage and Hour litigation which is referred to in the order, and stated that was one of the points at issue, and he assumed that we had whatever documentary evidence we needed, and referred to the fact that he believed I had been shown a copy of the court order in that proceeding involving Charles P. B. Pinson, Inc.

He then stated that, as far as the record of income tax evasion was concerned--and I am going to ask Mr. DeVore to listen carefully--

PRESIDING EXAMINER: Well, Mr. Newfield and Mr. DeVore, both, I appreciate the interest of counsel to get together and cooperate in these proceedings. As we all know, such a course, if it is taken, saves the time of everyone concerned.

Now if you wish to make this simply a matter of record for further use, we will let it be noted as a matter of record for further use, and otherwise we will proceed. All of this matter is matter which was clarified previously between counsel and has absolutely no materiality

now, and that goes for both Mr. DeVore's statement and Mr. Newfield's statement.

MR. NEWFIELD: I think it is material. It would be time-

[Tr. 66]

saving--

PRESIDING EXAMINER: Yes, it would be very time-saving if counsel could cooperate.

MR. NEWFIELD: If we could, for example, know that there is no issue between the parties as to the alleged income tax evasion, as Mr. DeVore has indicated to me.

PRESIDING EXAMINER: Well, if that is correct I would wish that it be in the form of a written stipulation.

MR. NEWFIELD: Can we not stipulate on the record?

PRESIDING EXAMINER: You could stipulate it on the record, naturally, but I think it would be better if we go off the record for the purpose of having it written out and then having it read into the record.

The reason that I would prefer the stipulation be written is that I have found that having stipulations orally stated in the record-- Well, the first thing you know, there is argument and so on as to what actually has been agreed to. And we do not want to guess. So, if you want to write it in a rough draft and then talk it over--

MR. NEWFIELD: Then, Mr. Examiner, can we go off the record?

PRESIDING EXAMINER: We will go off the record for that purpose.

(Discussion was had outside the record.)

PRESIDING EXAMINER: We will return to the record.

[Tr. 67]

Have counsel arrived at a stipulation that they wish to enter?

MR. NEWFIELD: Mr. Examiner, I think I can read a stipulation on which counsel have agreed into the record. The stipulation is as follows:

It is hereby stipulated by and between counsel for the Federal Communications Commission and counsel for Charles P. B. Pinson, Inc. and James C. Fields--

PRESIDING EXAMINER: And Mr. Rosenson?

MR. ROSENSON: Well, I have no objection.

PRESIDING EXAMINER: You are willing to agree to this stipulation?

MR. ROSENSON: That is right.

PRESIDING EXAMINER: Thank you. Proceed, Mr. Newfield.

MR. NEWFIELD: It is hereby stipulated by and between counsel for the Federal Communications Commission and counsel for Charles P. B. Pinson, Inc. and James C. Fields as follows:

The Commission staff does not have any evidence to present in this proceeding relevant to a showing that Charles P. B. Pinson personally or Charles P. B. Pinson, Inc. has violated any federal statute relevant to income tax, and that this item will not be an issue that either of said parties will be required to meet at this hearing.

[Tr. 68]

Mr. Examiner, I think that the issue which is no longer a part of the stipulation-- May I direct the Examiner's attention to the fact that this issue is referred to in 88811(7).

Mr. DeVore, does that properly state our stipulation?

MR. DE VORE: Yes. I have no objection to that.

PRESIDING EXAMINER: The stipulation is accepted.

MR. NEWFIELD: Now, Mr. Examiner, I hope that you will pardon me, that you will bear with me again if I remove my motion. And I point out to the Examiner's attention--

PRESIDING EXAMINER: Is this re-argument on the motion for continuance?

MR. NEWFIELD: This is a further argument.

PRESIDING EXAMINER: Mr. Newfield, I will hear no argument. You may make a statement if you wish to preserve it as a point of appeal.

MR. NEWFIELD: Then I will state for the record that, if permitted by the Examiner to do so, I would give further detailed specific reasons which, in my opinion as counsel for my clients, warrant and, indeed, would impel a granting of the motion for continuance.

I ask leave of the Examiner to place these additional reasons in writing in the record at a future date. I would also point out further for the record, in support of this motion which I understand is now denied by the Hearing Examiner--

PRESIDING EXAMINER: Which had been previously denied.

[Tr. 69]

MR. NEWFIELD: Which had been previously denied by the Examiner, that the fact that on Friday I was first informed by counsel for the FCC in a telephone conversation which was initiated by me that the staff did not propose to go further or to present any evidence with reference to this issue of income tax violation is indicative of the lack of consideration on the part of counsel, for the counsel to furnish reasonable information which should have been passed on to me as counsel for these parties as soon as that determination was reached.

In the meanwhile we have been compelled to attempt, in the limited time available--

PRESIDING EXAMINER: Mr. Newfield, I wish to point out that you have had since October to prepare.

MR. NEWFIELD: Well, that, of course, is a matter of record, Your Honor.

PRESIDING EXAMINER: Yes.

MR. NEWFIELD: But, for the reasons we have submitted previously, mainly the fact that I was involved in another proceeding in Washington which is still there and which was not contemplated by me until I made my initial request, was granted for postponement-- I represent the City of Birmingham and the City of Tuscaloosa in a proceeding before the

Federal Power Commission involving a proposed rate increase of some \$19 million and which is a matter of vital concern to those two municipalities and to roughly some 360,000 people--and

[Tr. 70]

I do regret that I could not foresee that the proceeding which commenced in Washington before the Federal Power Commission would--

PRESIDING EXAMINER: Excuse me, Mr. Newfield. You are now reiterating a statement previously made. I understood you were going to state additional matter. If you have such, you may state it if you wish.

MR. NEWFIELD: Well, Mr. Examiner, it gives me some little sense of some outrage that we are now confronted with this situation where an agency of the United States Government accuses the licensee of income tax violations, or it is a virtual accusation, and then two days before hearing commences we are informed that they have withdrawn that aspect.

MR. DE VORE: Mr. Examiner, I would like to be heard on this.

PRESIDING EXAMINER: I don't wish any further argument--

MR. DE VORE: I think that, just for clarity of the record, Mr. Examiner--I want to point out that the issue as stated in (7) of the order which Mr. Newfield referred to says:

"To determine whether Charles P. B. Pinson, Inc. or Charles P. B. Pinson have been found, by competent authority, to have violated any federal statute relating to income tax or pertaining to wages and hours of their employees."

[Tr. 71]

This was not an issue designed to permit the Commission staff to engage in determinations of whether or not there were violations of the income tax law. They related specifically to actual introduction of

judgments relating to this particular matter, and Mr. Newfield was so advised at the pre-hearing conference in November.

PRESIDING EXAMINER: I think the record is perfectly clear on this matter. The issue as specifically worded does not lend itself to more than one interpretation.

Are you now ready to proceed with your case, Mr. Newfield?

MR. DE VORE: Mr. Examiner, we could not resolve the problem of whether or not Mr. Newfield was going to tell us whether he would voluntarily have the documents in the room which we have asked be presented.

PRESIDING EXAMINER: Well, Mr. DeVore, raise that when the proper time comes.

There was an informal agreement between counsel, and I cannot control informal agreements between counsel when you have not requested an exchange.

MR. DE VORE: Well, Mr. Examiner, I feel I have the right to know whether or not these records will be produced. I am not asking you to direct Mr. Newfield to present them. I am just asking if Mr. Newfield wishes to proffer them voluntarily; otherwise we will proceed to draft a subpoena.

* * * *

[Tr. 89]

ARTHUR A. GLADSTONE

a witness appearing for and on behalf of Charles P. B. Pinson, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEWFIELD:

Q. Will you please state your name for the record?

[Tr. 90]

A. My name is Arthur A. Gladstone.

Q. What is your position, Mr. Gladstone? A. I am employed by the Federal Communications Commission as Chief of the Domestic Radio Facilities Division of the Common Carrier Bureau.

Q. And I believe you stated on the record a short time ago that you expect to be one of the principal witnesses on behalf of the Commission at this hearing. A. That is correct.

Q. You are also at this point one of the counsel representing the FCC? A. The record so states.

Q. I will ask you, Mr. Gladstone, if during the past week or ten days you have been engaged in making preparations, final preparations for this hearing. A. That is correct.

Q. And you have been in the Tampa-St. Petersburg area during that period? A. I have been in the Tampa-St. Petersburg area, so engaged since February 13.

Q. And you have had-- A. Now let me correct that. Make it February 12.

Q. Since February 12? A. That is correct.

Q. And would you state also for the record the names of

[Tr. 91]

the other Commission personnel who have been with you since that period?

A. I have been accompanied during this interval by my associates: Mr. DeVore, who is counsel in this proceeding, chief counsel; and also by Mr. Frank Palik, who is the assistant chief of my division--

Q. I am sorry, Mr. Gladstone, I did not hear you.

PRESIDING EXAMINER: Will the reporter read back the last statement, please, as far as it went.

(The statement referred to was read by the reporter.)

THE WITNESS: And also accompanied by Mr. Byron Harrison who is an attorney on my staff.

BY MR. NEWFIELD:

Q. During this period of time, Mr. Gladstone, had you called upon

the Marshal in Tampa, the United States Marshal, to deliver subpoenas to witnesses in the area for this hearing? A. I have, during this time and prior thereto.

Q. Will you state for the record when you first made such requests of the Marshal? A. My best recollection is that such request was made on or after January 15, 1961. I can verify this by reference to my files, if you desire.

Q. Will you do so, please, sir? A. Indeed.

(After consulting documents) I think my statement of

[Tr. 92]

the date is approximately correct, Mr. Newfield. I note that the earliest return from the Marshal is dated January 18.

Q. January 18, 1961? A. That is correct.

Q. The earliest return? A. Yes, sir.

Q. Mr. Gladstone, do you have with you or readily available a copy of your request for the issuance of subpoenas?

PRESIDING EXAMINER: Were you not served with a copy?

MR. NEWFIELD: No, sir, we have not been served with copies.

MR. DE VORE: May I ask the relevance of the question?

MR. NEWFIELD: Well, I think we are entitled to have it; I think it is perfectly proper--

MR. DE VORE: I am going to object--

THE WITNESS: May I state to counsel for--

PRESIDING EXAMINER: Just a minute. I deny, I overrule the objection. Have the record show that I am ruling it is denied. The witness will answer the question.

THE WITNESS: I have copies available, yes, sir.

BY MR. NEWFIELD:

Q. Did you prepare the request yourself? A. Yes, I did.

Q. For the issuance of the subpoenas? A. That is correct.

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[Tr. 98]

Q. Will you answer the question as modified by your attorney?

[Tr. 99]

A. I believe it is correct. I called Mr. Magee on the telephone; that is correct.

Q. Now, as to my characterization, I will ask you if it is not a fact that you know of your own knowledge from information you had elicited from Mr. Charles P. B. Pinson, and you are aware of the fact that Mr. Charles J. Magee had been doing such work for Charles P. B. Pinson, Inc? A. I don't know what you are referring to by "such work". We have in our files--

Q. May I clarify it, if you don't know what I mean? A. Yes.

Q. It might save time. When I used the word "such" I was intending to refer back to my original question which stated that he was a public accountant and had done some tax work or accounting work for Charles P. B. Pinson, Inc. A. I will answer you this way, Mr. Newfield: when I called upon Mr. Magee, all that I knew was what had been represented to the Commission in a communication sent by Mr. Pinson and signed by him, namely, that Mr. Magee was an accountant who had audited certain financial records submitted to the Commission by Mr. Pinson. It was for that reason I communicated with him, and it was for that reason we subpoenaed him.

Q. Yes. So that-- Do you recall what time of day it

[Tr. 100]

was you telephoned Mr. Magee? A. I don't remember precisely.

Q. Was it in the morning on Sunday? A. It was probably Sunday, noontime, yes.

Q. And did you make an appointment with Mr. Magee at five o'clock that afternoon? A. That is correct.

Q. At what time did you show up for the appointment? Well, I will ask you if it is not a fact that you appeared at or about 3:30 o'clock in the afternoon in front of Mr. Magee's house? A. I don't remember the precise time other than to state that we were early, probably about an hour early when we arrived.

Q. And I will ask you if you did not come back again after you were told by Mrs. Magee that he was not there? If you did not come back again within fifteen or twenty minutes thereafter? A. That is not my recollection, no.

Q. Well, would you state to the best of your recollection when it was that you met Mr. Magee? A. Well, I know we appeared at the house early, that Mr. Magee was not available at that time.

We returned again at approximately the time of the appointment, and we were advised that he had not yet returned,

[Tr. 101]

and we sat in the car outside. The next thing that happened was, Mr. Magee came to the door and called to us and invited us in. That is my recollection.

Q. That was at your second appearance? A. I believe it was.

Q. When you say "we"-- A. I was accompanied by my associates.

Q. The ones that you referred to previously, Mr. Palik and Mr. Harrison? A. I think they and Mr. DeVore were all with me, yes.

Q. Was there anyone other than those present with you? A. No, sir.

Q. Do you mind stating why it was you appeared an hour and a-half, approximately, prior to the agreed-upon appointment time or hour?

A. No, I have no objection to stating.

Mr. Magee gave us instructions how to find the place, and conveyed to me the impression it was some distance away from where I was and quite difficult to find. Under the circumstances, we allowed ourselves adequate time so we could be there at the appointed time, not later. And, as things turned out, we got there a lot sooner than we expected, and,

having arrived there, we undertook to see if he was home and available at that time, and, when told he was not, we thanked Mrs. Magee, and we left and said we would be back later.

[Tr. 102]

When I say "we" I am speaking there editorially because the other gentlemen were in the car. I went alone and spoke to Mrs. Magee.

Q. And, as I understand, you stated that a few minutes later Mr. Magee himself came to the door? A. No, I did not state that. I stated we drove away from the place, and we went about looking around in the neighborhood, and I made a stop at two or three gas stations to see if we could have my car washed, and we killed time and came back again, to the best of my recollection, and since I made no notes about this or had any reason to pay particular attention to the events, I may be a little imperfect about the timing but we returned, as best I can remember, about the time of the appointment.

And I rang the bell again, and Mrs. Magee said he had not come in, and we waited in the car, and sometime, not too long after, Mr. Magee came to the door and invited us in and explained the reason why he was not in the house the second time, was that he was out back somewhere in another location with a neighbor, helping that neighbor prepare a tax return. So he had come in and gone out the back way.

Q. Now, Mr. Gladstone, I would like to ask you if you did not interrogate Mr. Magee with reference to the work he had done for Charles P. B. Pinson, Inc. A. I did.

[Tr. 103]

Q. And at the conclusion of your interrogation, I will ask you if you did not ask that he not reveal to Mr. Pinson or Mr. Fields that you had been there and had seen him. A. What I said to Mr. Magee--

Q. Will you answer my question yes or no, please, and then explain

if necessary? A. I cannot answer your question yes or no.

PRESIDING EXAMINER: Well, did you use the words that Mr. Newfield used in asking the question?

THE WITNESS: I won't say-- I did not use those precise words, no.

What I said to Mr. Magee was that, of course he had a perfect right to communicate with Mr. Pinson if he so desired, and I had no way of preventing him from doing so, but I would appreciate if he did not communicate the fact that we had subpoenaed him, that we intended to subpoena him, because I advised him at that time we intended to subpoena him, and he said, "Well, I will call and tell him that I have been subpoenaed." And I said, "You are perfectly free to do so."

And I might say I was not alone at the time I talked to Mr. Magee. I was accompanied by somebody.

MR. NEWFIELD: I move to strike the last voluntary statement by the witness.

PRESIDING EXAMINER: The statement will be stricken as not responsive to the question.

[Tr. 104]

BY MR. NEWFIELD:

Q. Do you deny that you asked Mr. Magee not to reveal to Mr. Pinson or to disclose to Mr. Pinson or some such adjective, meaning the same thing, that you had-- I withdraw that.

Do you deny that you did not ask Mr. Magee not to disclose to Mr. Pinson, or to reveal to Mr. Pinson the substance of the discussion which you had with Mr. Magee on that occasion? A. I will say again, what I recall telling Mr. Magee--

MR. NEWFIELD: I am going to ask Your Honor that the witness be instructed to answer the question yes or no if it is susceptible to that kind of answer.

PRESIDING EXAMINER: You may answer the question yes or no, or you can state that you cannot answer it yes or no, and you may qualify your answer then.

THE WITNESS: I don't feel I can answer yes or no in the terms in which the question was asked because there is a qualification that attaches to what I said. I explained to Mr. Magee--

MR. NEWFIELD: I object. Just a minute, Mr. Gladstone. I object to any voluntary unresponsive statement.

THE WITNESS: I am trying to be responsive.

PRESIDING EXAMINER: He was responsive, Mr. Newfield, when he stated he did not use the language that you have used.

[Tr. 105]

THE WITNESS: Well, let me say--

MR. NEWFIELD: Then he went on to volunteer some further statement of facts which clearly was not responsive. That can be brought out on cross-examination.

THE WITNESS: I would like to explain I have not yet answered Mr. Newfield's question.

MR. NEWFIELD: You have answered the question, but you have not answered yes or no.

THE WITNESS: No, I have not.

PRESIDING EXAMINER: He has answered that he cannot answer yes or no.

MR. NEWFIELD: That is precisely what I said.

THE WITNESS: I stated to Mr. Magee--

MR. NEWFIELD: I object.

PRESIDING EXAMINER: Objection sustained.

THE WITNESS: Well, Mr. Examiner, may I state what I stated to Mr. Magee--

PRESIDING EXAMINER: Counsel can bring it out.

MR. DE VORE: Mr. Examiner, Mr. Newfield is not permitting the witness to finish his answers. He is interrupting, making motions or objections. The witness has not yet given one complete answer.

PRESIDING EXAMINER: The witness did give the answer that he

could not answer yes or no in the terms in which the question was asked. He did start to explain. You may bring that all out

[Tr. 106]

on cross-examination.

BY MR. NEWFIELD:

Q. Now, Mr. Gladstone-- A. Yes.

Q. I will ask you if it is not a fact that Mr. Magee told you, in response to your question or to your request, that he not reveal the discussion which you had with him, that he said--

PRESIDING EXAMINER: Mr. Newfield, there you are making an assumption that the witness did so state. The witness has not yet testified that he did.

MR. NEWFIELD: Well, I think this is relevant and a question that can be put to an antagonistic witness, may it please Your Honor. I am doing nothing but rephrasing the question I asked a moment ago, which is incorporated in the question I am now asking, but that is certainly within the legitimate scope of cross-examination.

PRESIDING EXAMINER: This is not cross-examination. He is your witness.

MR. NEWFIELD: Well, actually, under the federal rules it is tantamount to that. I am entitled to ask the kind of questions that I could ask on cross-examination of an adverse witness, and I would be bound by it, and I submit it is well within the--

PRESIDING EXAMINER: Will you rephrase your question?

[Tr. 107]

My objection was that you were stating he testified that he did.

MR. NEWFIELD: That is correct. I certainly did not incorporate that in my question, and I did so intentionally.

PRESIDING EXAMINER: Thank you.

MR. NEWFIELD: I am trying to refresh the witness' testimony; I

am trying to elicit an answer as to what occurred, and I think that the question is proper in the context of his conversation--

MR. DEVORE: It is repetition, Mr. Examiner. The answer has already been given.

PRESIDING EXAMINER: Well, will you rephrase the question? I think that I have got myself confused now.

MR. NEWFIELD: All right.

BY MR. NEWFIELD:

Q. Mr. Gladstone, I now ask you this question:

Is it not a fact that you went into the house, you had a discussion with Mr. Magee about certain work which he had done or which you understood had been represented by Mr. Pinson had been done by him relating to accounting, and he gave you certain answers, and when you concluded your conversation along that line did you not ask him, after you had previously asked him not to reveal the nature of the discussion to Mr. Pinson, if you did not ask him--

I withdraw that, the last part of it.

If he did not state to you in substance as follows:

[Tr. 108]

"Well, according to accounting ethics, I have to tell my client that you came to me and discussed this matter." Did he not make that statement to you? A. He made such statement in substance, yes, and I said I understood it, if he wanted to communicate all or a portion of it.

Q. Then one further thing, Mr. Gladstone. Did you not then say, "Well, if you will not agree not to discuss the nature of what I have talked to you about, if you will not agree to that, will you at least agree not to do anything more than tell him--"

I withdraw that. Let me rephrase the question this way:

Did you not at this point, in conversation with Mr. Magee, say to him in effect, "If you feel it is incumbent upon you not to accede to my request, and you tell your client that I have seen you, will you

simply limit it to a statement that I have seen you and did not reveal the nature of the discussion?" A. I have no recollection of such statement.

MR. NEWFIELD: No further questions.

* * * *

[Tr. 111]

REDIRECT EXAMINATION

BY MR. NEWFIELD:

* * * *

[Tr. 112]

Q. Is this your standard method of procedure, talking to witnesses who are employed, professional witnesses who are employed by respondents, to ask them not to discuss the matter with their own clients?

A. I have never before had occasion to interrogate on such a matter.

Q. And I trust you will never again.

MR. NEWFIELD: I have no further questions at this point, Mr. Examiner, but I think it is appropriate for me as attorney for these two parties to request respectfully that the Trial Examiner instruct, to admonish Mr. Gladstone to abstain in the future, during the conduct of this hearing or any adjournment thereof, from interrogating witnesses who are employees or who are professional people, accountants or under contract with them, suggesting that they not, that they violate the rules of their profession or the ethics of their profession--

PRESIDING EXAMINER: Well, I am perfectly sure that Mr. Gladstone, if he had known that was a violation of the ethics of that profession, that he would not have--

Well, I do not see any useful purpose in instructing the witness on that line.

MR. NEWFIELD: Well, this was merely a statement of Mr.

[Tr.113]

Magee. I am not sure that Mr. Gladstone would agree that it is improper.

MR. DE VORE: Well, Mr. Examiner, I am sure that Mr. Gladstone--

PRESIDING EXAMINER: I see no need to go into it any further.

We will at this recess until 2:00 p. m.

(Whereupon, at 12:35 p. m., a recess was taken until 2:00 p. m. of the same day.)

* * * *

[Tr. 130]

MR. ROSENSON: Mr. Examiner, when Mr. Newfield first made this request to call these witnesses, it appeared as if he was

[Tr. 131]

going rather extensively into some of the issues in Docket 13587, namely, Issue (r), Paragraph 2, which appears to be mainly related to my docket.

Now I have no objection if he merely wishes to call some subscribers to testify as to the nature or quality of service being provided by Mr. Fields. I have no objection. But I do not want him to go any further afield at this time.

MR. NEWFIELD: I might say these are witnesses who are subscribers to the service.

PRESIDING EXAMINER: I understand they are Mr. Fields' subscribers.

MR. NEWFIELD: That is correct.

MR. ROSENSON: Then I have no objection.

MR. DE VORE: Mr. Examiner, I would also like to point out that there is no issue regarding the service insofar as Mr. Pinson's station is concerned, and I would hope that Mr. Newfield is proposing to call

witnesses who will testify as to the Tampa pocket phone paging service.

MR. NEWFIELD: We have both.

PRESIDING EXAMINER: Well, I hope that your hope is realized.

MR. DE VORE: Because the other is just going to be a waste of time for all of us, any evidence on quality of service involving any other station than KIK578, because we would propose to make an objection to it.

[Tr. 132]

MR. NEWFIELD: Do you concede that the service from the other station is adequate? No question?

MR. DE VORE: We don't have to concede anything. I don't believe there is that issue in the case.

PRESIDING EXAMINER: There is no issue is what he is pointing out, Mr. Newfield.

MR. NEWFIELD: Well, we will be happy to adopt any procedure that will save time, I am sure.

PRESIDING EXAMINER: Well, let us get to the witnesses. If there is objection to their testifying, we can deal with it at that time.

MR. NEWFIELD: May I have a moment to talk to the physician?

PRESIDING EXAMINER: We will go off the record for that purpose.

(Discussion was had outside the record.)

PRESIDING EXAMINER: Let us return to the record.

* * * *

[Tr. 316]

Tampa, Florida

February 23, 1961

* * * *

[Tr. 428]

DeWITT C. BAILEY

a witness appearing for and on behalf of Charles P. B. Pinson, Inc.,
having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEWFIELD:

* * * *

[Tr. 435]

Q. And is this contract also on a 24-hour basis?

[Tr. 436]

A. Yes, sir.

Q. Thank you. Now, as to the price of this service, did your
company quote Mr. Charles P. B. Pinson a single price for the services
which you have been rendering and are rendering for both of these sta-
tions? A. Yes, sir, we did.

Q. And payment has been made to you by the Charles P. B. Pinson
company of those charges? A. Yes, sir, they have.

MR. NEWFIELD: That is all. Thank you.

PRESIDING EXAMINER: Mr. DeVore?

MR. DE VORE: May I have the next-to-the-last question and answer
read back, please?

PRESIDING EXAMINER: Will the reporter read them back.

(The record was read by the reporter.)

CROSS-EXAMINATION

BY MR. DE VORE:

Q. In response to the last two questions, Mr. Bailey, were you re-
ferring to both of the stations in Tampa that you quoted a single price
for maintaining and servicing? A. State that a little louder, if you will.
I couldn't hear you.

Q. Mr. Bailey, in your last two answers to questions by Mr. Newfield were you referring to both of the stations in

[Tr. 437]

Tampa? That is, the two-way mobile radio station and the one-way signalling station? A. As to payment for services?

Q. Yes. A. Yes, sir.

Q. When did you first enter into a contract with Mr. Pinson for servicing both of these stations? A. Well, I entered into a contract with him on the two-way radio system at the time that he took over the operation of the station from the purchase of the former owner.

Q. You first had a contract for the maintenance and servicing of the two-way mobile radio station in Tampa? A. Yes, sir, that is correct.

Q. Did Mr. Pinson come to you and then ask you to service the one-way signalling station in Tampa? A. Yes, sir, he did.

Q. What did he say to you on that occasion, if you can remember? A. Well, he came and asked if we would install this equipment and maintain it for him, and we made an agreement as to terms for the installation and the monthly service on the equipment.

Q. Did you enter into a written contract at that time? A. No, sir, we did not; a verbal contract.

Q. Did you submit a single bill for servicing both

[Tr. 438]

stations after you agreed to service both stations? A. Yes. We agreed that we would itemize the invoice as to what the service was, for the charges, and it is so itemized on the bill for each base station and the number of mobile units serviced per month.

Q. When you say base station do you mean both base stations? A. Are invoiced separately with the call letters identified on the invoice.

Q. However, you did submit only one bill, and was this bill addressed to Charles P. B. Pinson, Inc? A. I believe it was addressed to Auto-Phone Radio Telephone Answering, if I recall correctly. We were never-- We are a little indefinite, and as long as we sent the bill and got the money we weren't interested in just how-- They never advised us to change anything. Later the bill was made payable-- I mean made out to Auto-Phone Telephone Answering and it is mailed to St. Petersburg to Charles P. B. Pinson, Inc., that address. The invoices are mailed there for payment.

Q. Mr. Bailey, do you know what the authorized power input of the transmitter for the one-way signaling station is? A. The authorized power input?

Q. Yes. A. I couldn't say definitely the maximum allowed by the

[Tr. 439]

FCC, but, to the best of my belief, it is in the neighborhood of 600 watts.

* * * *

[Tr. 451]

Tampa, Florida

February 24, 1961

* * * *

[Tr. 484]

CHARLES P. B. PINSON

a witness appearing in his own behalf, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEWFIELD:

* * * *

[Tr. 486]

Q. What is the name of that station? A. The beginning call letters were KIA. I don't remember the rest of the call letters, sir.

It was located at 35th Avenue and 4th Street North in St. Petersburg at the old WTSP studios. That station was transferred to us with the consent of the Commission.

Q. Have you continued to operate that station thereafter? A. Yes, until the following spring where we disposed of the station to what was then the Peninsula Telephone Company on their agreeing to continue the same rates and to continue the operation of the station in the same location. After they transferred the station away from the St. Petersburg area and left us without communications we applied for a license for the St. Petersburg area, which was granted by the Commission, which is our existing station license KIG-289 which is the two-way mobile station in St. Petersburg.

Q. Now, generally speaking, Mr. Pinson, has it been the policy of the corporation to comply to the fullest extent with the applicable rules and regulations of the Federal Communications Commission in and about the operation of that par-

[Tr. 487]

ticular station and all of the other stations for which your corporation has licenses? A. Yes. We have required our people to conform strictly to FCC regulations. On many occasions when we have been in doubt we have telephoned the inspectors locally here. We have talked to the Bureau on many, many occasions in Washington. We have made personal visits to Washington to attempt to do things properly and find the proper way of doing them.

You have to remember that in this business income is very limited. In other words, you can't hire expensive legal firms. We have also done this for, I believe, beginning back in the fall of 1953. We hired our first member of the FCC bar who was licensed.

Q. Now, in addition to the operation of these radio stations for which you hold FCC licenses, you are engaged in the business of furnishing telephone answering services; that is, when I say "you" I mean the corporation. A. Yes, sir. We operate 24-hour-a-day, 7-day-a-week services. In other words, our offices are never closed or unmanned as far as the telephone operators are concerned. Of course, our business offices are closed. We operate these facilities and have operated them in the past in Clearwater, St. Petersburg, Tampa and Lakeland, though we disposed of our Clearwater office, the telephone answering office, on the 1st of February of this year.

[Tr. 488]

Q. That is the telephone answering service office in Clearwater?

A. That is correct, sir. And I don't believe I stated a while ago the radio licenses which we hold, we hold one with a paging license in St. Petersburg, and the call letters are KIG-843, and here in Tampa we purchased in the fall of 1958 from Wofford of Texas, and I believe the call numbers are KIB-386. I believe Wofford is located in Dallas or Houston. We made applications to the Commission, submitted a contract to them, and they transferred this Tampa two-way station to us at that time.

We also have an existing construction permit for the City of Jacksonville whose call letters are KIN, and I do not remember the balance of the call letters assigned, and we have a pending application, I believe, for moving those facilities, and asked for additional time to construct the station until these proceedings are over because we did not feel we should proceed with a new investment of capital until our position here with the Commission has been clarified. After all, this has been going on now for 24 or 26 months because we have had a pending application since September, 1958, that has not been acted on.

Q. Is it your opinion as the president and principal stockholder of the corporation that the improvement could be improved and would be

improved substantially as soon as

[Tr. 489]

this hearing is terminated and you are granted the application to which you refer, the renewal? A. Yes. An example of this is one of these pending applications to move the station towers of WLCY, attempt to give greater coverage.

I believe, if I remember rightly, the contour on KIG-289 is something like 35 or 40 miles, which is three or four times the existing coverage under FCC rules.

We have looked into selective calling. We need mobile units. We could go out and solicit customers and put many times the number of customers on active service if we actively solicited, which we are not able to do.

Q. You refer to obtaining additional receivers. Are these instruments costly? A. Yes.

Selective calling receivers-- The people I have talked to, the prices have run all the way from about \$85 to \$90 to \$125 to \$130 depending on where you buy them and whose make you buy and so forth. So you talk of buying 75 or 100 more receivers like the St. Petersburg station, and this is a sizable investment. The purchase of mobile units, that is \$500 to \$600. If you add selective call it is another \$100 to \$150 depending on the features you put into it. This is a great deal of money when you begin talking in terms of 50, 75, 100 customers. But the only way we can make any money in the

[Tr. 490]

two-way business is by volume.

At the same time we are faced with an additional problem because of this delay by the Commission in holding this hearing, and, though we are the originator--though we are the original licensee in this business

in the Tampa Bay area, during this intervening time many of the channels which the Commission has made available have been applied for and given to other people newer in the business. You have to make a showing to fill a channel before you can apply for another channel, and yet we are left in the position that we cannot buy additional equipment and investment to fill up our channel so we might apply to receive one even though we have had these pending applications for this long period of time, since September of 1958.

Q. Now, Mr. Pinson, one question at this point. I would like to make clear on the record that the economics of this business are such that without very large volume in the one- and two-way paging services, it is not feasible to operate and expect to make money unless you do so in conjunction with the telephone answering services to which you refer. Is that your experience? A. Yes, sir.

Most of the services in the United States-- There are a few large ones that operate independently on radio. Most of these operations are not physically operated by their

[Tr. 491]

owners unless the owner is also engaged in some other type of business to help carry the cost.

What happens in many cases with the smaller ones, and --there are two prominent things that happen. First is that they sign a contract with someone else to operate them where they have a small, low-volume per month, or the second thing that happens is that they operate them for only very limited periods of time instead of keeping their stations open 24 hours a day 7 days a week as Charles P. B. Pinson, Inc. does. So that what has happened is that we have subsidized this radio operation out of our other revenue over a great many years with the hope of building the volume high enough so we could recover a profit from it.

On the other hand, telephone answering in a very short period of time

covers its own way and shows its profit as a comparison in this business.

[Tr. 492]

Q. Now, Mr. Pinson, in addition to the radio and telephone answering service to which you have referred, what other business had your corporation engaged in, and what other business is it now engaged in?

A. Well, in the beginning we were a construction company, engaged in the building and sale of homes in the St. Petersburg area. And we gradually became interested in the communications business because we had to expand or get out of it, and by that I mean this: When you only have one person present with no standby personnel it means when someone is sick you have to work overtime and in many cases I had to go down and function at the switchboard or as a radio operator after spending the whole day in the construction business.

So to alleviate that we began to expand. So we gradually moved into the communication business because of the changing economic picture in the area, and our chief interest became the communications business. We gradually changed from the construction company into a company primarily interested in communications--which is telephone answering and two-way radio, and the communications fields allied with them.

Q. Now, Mr. Pinson, you made reference a few minutes ago to economies of operation which are achieved from combining telephone answering service with signaling service. A. Yes, sir.

Q. I will ask you if you recall the testimony of Mr. Bailey.

[Tr. 493]

I believe you were present in this courtroom when he testified yesterday. A. Yes, I was, sir.

Q. You heard his testimony about the cost of furnishing 24-hour service to James C. Fields, and I believe you stated that whereas he

was charging only \$15 a month, if it were not for the fact that he was also under contract to service the station owned by your company which is located in and which has an installation in the same place here in Tampa, the charge for that service would be \$30 a month. Do you recall that testimony? A. Yes, I do, sir.

Q. Now, I will ask you if this is merely an example of the economies which you have been able to achieve by the combined operation not only of the Fields pocket paging service but your other operations as well.

A. Yes, sir. I don't know of any engineering firm in the United States that maintains a 250-watt station on a 24-hour standby basis for \$15 a month, and the only way this was possible was by giving--we already had a contract to maintain the Pinson, Inc. facilities.

Q. Now, the advantages in the combined operation, I think, have been demonstrated, briefly. Do you find any serious obstacles to the combined operation? A. No, sir. Would you like for me to give an example

[Tr. 494]

of it?

Q. Yes, would you, please? A. Yes. An example is our book-keeping department. We operate a number of radio stations and we operate a number of telephone answering services in various cities, and all of this bookkeeping is done by one full-time girl and a little extra help on billing days for a day or so. She also acts as secretary for our entire operation. So our entire office staff in four cities is only one girl. We couldn't possibly stand a charge for one girl in each city.

That is an example of the economy involved. And, for instance, Mr. Fields' station over here, at \$500 or \$600 a month --I don't have the figures in front of me, but there are 720 hours in a month, roughly, on an average yearly basis, and the minimum wage of one dollar an hour--well, if he had to have employees to staff that station, he would automatically be in a hole as far as money is concerned.

And the same is true of buying supplies, the purchasing of radio engineering service--the matter of roof rent--it runs throughout the entire business--the more volume, the cheaper.

Q. Now, you have referred specifically to several items where economies are achieved by the combined operation. For example, you referred to the bookkeeping, referred to purchases, referred to roof rent. Now, will you give on the record what

[Tr. 495]

your experience has been along the same line as far as the employment of operators? For example, would you describe the physical setup in the Tampa one-way pocket paging station where you have located also a radio service for the corporation?

A. Yes. Our offices are divided and marked. They are separated from the general public so as to prevent the general public from coming in contact directly with the operating personnel and the board and with messages that we are dealing with on a confidential basis.

Now, in the control room here in Tampa there are two switchboards located to the left of the control to the left of the control room, the telephone answering board, and all of these boards run extensions from many, many telephone answering customers, on the trunks and facilities of our company.

Directly adjoining that is a radio position board which we designed and built for the convenience of our personnel. Installed in that is the two-way radio control for KIB386 which is a two-way station here in Tampa--

Q. That is the station which is owned by the Pinson company?

A. That is correct. And then in that same board to the right, in other words, to visualize it, we have roughly four positions divided into two segments, the left half for telephone answering which consists of two boards, the right half of the segment is a radio control board which consists of two seg-

ments, one segment of which has facilities for a two-way station, and the right-hand part of that segment--a segment which has space for the paging station.

Q. What personnel do you have on duty at this location and what are their functions? A. Well, all of our personnel are licensed by the Federal Communications Commission. Up to a short time ago it was required. I understand it is not required now, which places the burden on the licensee. But we prefer to license our people so they are familiar of their own knowledge with the various requirements of radio operating.

These people operate the answering board. They operate the two-way without changing their position, and the paging that I described, on this far right-hand of the segmented position is where the paging equipment is located. That paging equipment is not very complicated. It consists of a remote control which is associated with the transmitter and furnished by the transmitter manufacturer and some sort of audio device which reproduces the audio sound. In our case we use the Mohawk tape machine with a very small-time segment belt on this machine. These are made in cartridges and we lift one out and put in a new one, because the time limit is very small.

I would like now to describe how the girl gets one of these numbers on the air if I may, to show how the personnel does this.

Q. Please describe that.

A. All the girl has to do, she gets up out of the chair and it is right there in front of her position, she scoots her chair over and writes down the call number of the unit she is going to call on the air--

Q. What station are you talking about, the paging station, KIK578?

A. Yes, sir.

Q. That is owned by Mr. Fields? A. That is correct.

Q. Which you are operating under contract? A. That is correct.

Q. All right. A. She writes it down on the log. She reaches out and right there is the switch of the Mohawk tape machine and she places it on the "Record" position. And most of those belts are only 10 seconds' duration. She records the number and whatever numbers are on the log undelivered in chronological order and she gives her call sign for Tampa, Florida, as provided by the rules. Then she slips it back to "Play" and it goes on the air. And the total time delay is not more than 10 or 15 seconds.

Q. That is, the time from when the message is received by telephone to when she puts it on the air? A. Yes. I imagine if she is busy or the call is moved over, it would be about 30 or 40 seconds--the actual time factor in inserting the call on the air is only 10, 12 seconds' du-

[Tr. 498]

ration.

Q. Is she the only operator on duty? A. No, sir. During the busy period of the day we always since the inception had a minimum of two people on duty even when we had only 25 or 30 accounts--

Q. You say "we." A. I mean Charles P. B. Pinson, Inc.

Q. Yes. A. Which owns the office here and employs all the personnel in it.

Q. Yes. Now, Mr. Pinson, does that complete your statement as to the mechanical operation by these operators at the station here in Tampa? A. Well, there is one further statement I would like to make on that. When she takes a call and writes on the message ticket--you understand, in paging many times there are no messages, you merely have a client who calls up--let me restate that.

The company who employs the man that uses our receivers might have arranged for him to call their office for the message when he hears this number, so instead of calling us for the message he calls his own personnel somewhere else, and they notify if he has responded and then we remove the number.

But if there is a message, it is written on the call ticket and placed on the board and delivered to them. When he calls--

[Tr. 499]

Q. Just a moment. Does the operator make a notation of each call that is received? A. Yes, sir, if there is a message. For instance, in a two-way we record all messages as part of our log, all these messages are written on a piece of paper and in the right-hand upper part of this piece of paper is put the call number of the unit involved and the name in the left-hand corner. In the right-hand corner is the calling part, phone number, in the center of it the message is written, the calling party's name, and the operator handling the call puts the operator's identification number on the lower right side of the ticket and then time-stamps the ticket when she begins the delivery process, on the face of the ticket.

Q. Then what does she do with the ticket? A. Well, if it is impossible to deliver she files it in a file which is provided above her position which responds only to this one mobile unit, 108 or whatever number, so when that man calls in all the tickets for the individual accounts are separate and distinct from one another and this radio ticket becomes part of the log of the station for a period of one year and after that time, of course, they are discarded.

Q. Now, Mr. Pinson, you made reference to placing these tickets above the space the operator occupies. A. Yes, sir.

Q. Would you describe how this is designed, who designed

[Tr. 500]

it and any other particulars as to the design and use of this equipment for the keeping of cards for each customer? A. Well, I assume you refer to the message racks above each position.

Q. Yes. A. These racks are made out of a clear plexiglass plastic and are designed for 3 by 5 cards so that all of the pertinent

information on an account is retained on a permanent 3 by 5 card and these are very closely proportioned and our message tickets are cut exactly to size, for instance, our message ticket itself is 4-1/2 inches long and we have that ticket made out of a white color piece of paper. We have two other colors we use, green and pink. Green tickets signify an account is out of his office and is located somewhere within the confines of this city and a pink ticket signifies he is out of the city. This means that because of the difference in paper length that regardless of how many messages are placed in it this account is always flagged and so the girl merely by raising her eyes can tell whether the account is available in the city or is out of the city or has a message or not, so there is very small delay in handling of messages and there is very small delay in delivering messages to the client. And we find also that a new operator after she has had training of three or four weeks is just as conversant with the information pertaining to the account as an operator that has been with us two or three years because it

[Tr. 501]

is all in the file in front of her.

Q. Mr. Pinson, would you state whether you purchase this message-rack equipment you described? A. No, sir. I originally saw it, the beginning idea, out in Dallas, Pearle Forrester. Now, we brought the idea back and we made modifications and changes to suit our needs and we attempted for a while to get somebody to build these things--very expensive--so the first racks for the company I built myself and then built a jig form so that any operating personnel, any girl, can make these racks for us. They provide several advantages, and the biggest advantage is you can see whether the customer has a message or not--a visible check on the operation. And if you happen to misfile a ticket behind the file cabinet, the 3 by 5 card, the girl merely by walking back, the girl on each shift checks the back of the cabinet or rack to see if a card or ticket has been mislaid, and this has led to great efficiency on

the part of our company.

Q. Mr. Pinson, you will recall the testimony by Mr. Staley about or concerning basic research? A. Yes, sir.

Q. And is this a part of or the result of the basic research, the design and building of these message racks you just described? A. No, sir, we are interested more in electronics, in that field.

Q. How much time in your judgment on a percentage basis or

[Tr. 502]

any other basis you can give of the total employment time of the chief engineer, Mr. Staley, and yourself is spent on what you term "basic research" of that kind? A. I would say 15 or 20 percent. The reason-- well, the reason primarily for this, an additional reason for it, is that because of the number of units that we have, Mr. Staley is not kept occupied all of the time by the maintenance of radio equipment and, therefore, we got into this field, and some of the things that we have done have proved of great interest to us and, we feel, for our future financial benefit.

Q. Now, you have described the Tampa office of Charles P. B. Pinson and also the facilities which you are operating with Mr. Fields in that office. Now, I wish you would describe briefly the equipment which you have in your base station located at 1221 Arlington Avenue, North, St. Petersburg, that is, the transmitter equipment, the number of operators you keep on duty and the general principal layout to the extent not already described by Mr. Staley.

A. Well, of course, the transmitting equipment is located at the Florida National Bank building, which has been previously described, and we control that over telephone wires leased by the company connecting with the transmitter and feed it back into our offices. We maintain very close level control equipment in the St. Petersburg office that we developed. An example of this is that you can whisper into a telephone in Tampa and you can take

[Tr. 503]

a man on the station in our St. Petersburg office and he can shout into the telephone and you won't have one k.c., hardly, of differential. In other words, 15 k.c. when you shout and 14 k.c. when you whisper. This is a whole series of compressors, amplifiers and circuits very closely balanced and controlled.

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[Tr. 513]

Q. Mr. Pinson, prior to the recess for lunch, you were testifying concerning the application which the Pinson company had made for a pocket paging station in Tampa. Now, in order

[Tr. 514]

that the records may be substantially clear as to the chronology, I would like to have you state step by step briefly, with identifications, the various radio installations in which your company became interested, and also to indicate chronologically your interest in the operation of telephone answering services. And, as a beginner, I would first like to qualify previous testimony.

I think you referred to this, but, in the interest of saving time, is it not correct that you--when I say "you" I mean the Pinson company--purchased from the receiver in bankruptcy this St. Petersburg station KIA which was a two-way mobile radio station, late in 1953? A. That is correct, sir.

Q. And then I believe you testified that you transferred this station with the consent of the FCC to the telephone company a few months thereafter. A. Yes, that is the Peninsula Telephone Company. I believe that was effective March 1, 1954.

Q. Now, how long after that transfer did the station continue in operation, approximately? A. The telephone company continued the

operations for about 3-1/2 months and then closed the station down, abandoned the tower, the location and moved everything to Tampa, and increased their rates-- I believe we were charging 5 or 6 cents per excess message to 40 cents plus tax per excess

[Tr. 515]

message.

Q. To what price? A. The excess message charges under the old tariff, I believe, were 5 or 6 cents. It has been 6 or 7 years ago. That is what we were paying at that time. After closing the station and installing new facilities in Tampa, they charged 40 cents per message plus tax, which made the cost 44 or 45 cents per extra call where once it was 6 or 7 cents.

Q. Was this new service from Tampa available to persons in the St. Petersburg area who were formerly using the service? A. Well, they were giving service, but their station didn't cover St. Petersburg and the beaches and the other areas that the existing St. Petersburg station did. They were transmitting from a Tampa location. The service was not satisfactory.

PRESIDING EXAMINER: By that you mean not satisfactory in St. Petersburg?

THE WITNESS: That is correct, sir. In other words, it was their contention with the Commission that one station in the area will cover the entire geographical area here, where in St. Petersburg, especially along our Gulf beaches, the signal was so poor you could not understand it. As a matter of fact, their own personnel tell me you can't understand it to this day.

BY MR. NEWFIELD:

[Tr. 516]

Q. Now the next station I believe you referred to was KIG-289 in St. Petersburg. This became operational-- A. That is correct, sir.

Q. That became operational at what time? A. We applied-- After they shut down this station there was a committee of the various subscribers that met, and they appointed me chairman and asked me to go to Washington to apply for the license again, which I did. As best I remember it, the Commission files are the best evidence: it was in June of 1954 that a construction permit was issued, and the station became operative a short time thereafter, which, as I remember, was about September or so.

Q. Did the Pinson company have any employees to operate that station? A. No, sir. We used a contract employee as everyone else in the industry did, including Mr. Wofford operating the station here in Tampa on a 24-hour basis.

MR. DE VORE: Mr. Examiner, I would like to ask the basis for the witness' last statement. He is indicating he has knowledge of the whole industry, and I would like to know what the basis of that is.

PRESIDING EXAMINER: You may bring it up on cross-examination, Mr. DeVore.

BY MR. NEWFIELD:

Q. You had someone then, as I understand it, to continue

[Tr. 517]

operating for sometime after you became operational in the fall of 1954?

A. Yes, I did.

Q. How long did that continue? A. Until July 1, 1955.

Q. What occurred at that time? A. We established an office at 913 Central Avenue. We applied for permission to the Commission to transfer our control point, which they granted.

We went into the telephone answering business in order to attempt to fill out the employees' time and make this a break-even operation.

Q. The Pinson company opened a telephone answering service at 913 Central Avenue in St. Petersburg? A. That is correct, sir.

Q. And thereafter you took over the operation of Station KIG-289?

A. That is correct, sir.

Q. And then you referred earlier to the application for a pocket paging station in Tampa and an application which you had made in the summer of 1955 for a station license in St. Petersburg. Then I believe you stated that in October of 1955 you dismissed your Tampa application and that was dismissed with or without prejudice? Do you know?

A. Dismissed without prejudice, sir.

[Tr. 518]

Q. And you were then granted the St. Petersburg application?

A. That is correct, sir.

Q. As I understand it, you would have been required to submit engineering data which would justify co-channel operation of the two stations before you could obtain both licenses. Is that correct? A. No, sir.

We had applied for 35.58 with St. Petersburg and 43.58 in Tampa. And, as I understand it from my phone call to Mr. Heckman, what the Commission wanted, they would grant one immediately and dismiss one, or, if we wanted to have both of them right now, we would have to provide engineering--we would have to prove engineering-wise that you could not operate both of these stations on the same channel, both of them on the 35 frequency or both on the 43 frequency. Of course, it is obvious that you cannot operate them both on the same frequency.

Q. Thereafter, Mr. Pinson, did you become involved in a hearing with a party by the name of Moon over a station in Clearwater, a two-way station? A. Yes, I did, sir. To the best of my recollection, that was in the fall of 1955 or the spring of 1956. I don't have the file in front of me on it.

Q. In other words, there had been an application made

[Tr. 519]

for a license in Clearwater, and what action did you take in connection with that application? A. Well, when it came out Mr. Heckman called me and asked if I wanted to protest it. It was inside of my service area. I said I certainly did. And we proceeded to retain him as counsel and to file a protest in this proceeding.

Q. At this point did you have a Clearwater telephone answering service? A. No, sir, I did not.

Q. Did you subsequently open such a service? A. Yes, I did, sir.

Q. When was that, Mr. Pinson? A. I forget whether it was in the summer of 1956 or 1957. I believe it was July of 1957, sir. Yes, I am quite sure. To the best of my knowledge, July 1 of 1957.

Q. Referring to the application which was made by James C. Fields for the pocket paging station in Tampa, approximately when was that application made? A. As I remember, it was in October of 1956.

Q. Did this application originate with you or not? A. No, sir, it did not.

Q. What was the origin of the filing of that application? A. Well, in the fall of 1956 Mr. Fields knew I--knew that we had had this paging station, had seen it operate and had seen the receivers, and he had discussed it on

[Tr. 520]

many occasions with me and he asked what I thought about opening a paging service over here in Tampa, and I told him mine was doing all right, it looks like it would do better in Tampa, an industrial area. He asked me about any objections. He knew I had filed for a station and withdrawn it a year or so before. I told him no, I was preparing to open this Clearwater office and I was involved in this Moon hearing and I expected the Clearwater office to lose \$1500 to \$1800 a month until we got the thing going and advertising, and I wasn't interested in opening a

Tampa facility. So he went ahead and filed an application for paging in the city of Tampa.

Q. Did you have any kind of understanding with him that he would have no responsibility, no ownership and would have no control in the event that the application were granted? A. No, sir, I did not. We didn't even have an office in the city of Tampa or contemplated opening an office at that time.

Q. Did you make an application for a coastal marine station in the Tampa area? A. Yes, sir, I did.

Q. When was that application made? A. As I remember it, in late 1956 or maybe 1957, January of 1957. It has been a long time ago.

Q. Did you follow through on this application, Mr.

[Tr. 521]

Pinson? A. We made several filings on it, and it looked like it was going to get all involved, and I withdrew the application because we had gotten into this Clearwater thing by that time. By late 1957 we had just opened the Clearwater office and were having losses up there. So I withdrew the application.

Q. You opened the Clearwater telephone answering service office sometime in 1957? A. Yes, sir. As I remember it, it was the first of July, 1957. As a matter of fact, we didn't have switchboards. We operated with telephones at first because our boards had not been delivered on time.

Q. At this time you still have nothing in Tampa operational? A. No, sir.

Q. When I say "you" I emphasize I mean not you personally but the Pinson company.

Did you make application to the FCC for a directional antenna which would give service to your company's Clearwater telephone customers?

A. Yes, sir. This has been a problem that has plagued us for a

long time. We have attempted many solutions. We have had many conferences with the Commission and the Commission staff, and this directional antenna technique was

[Tr. 522]

one of the suggestions they had to solve the problem, and we--

Q. What was the problem, Mr. Pinson? We haven't talked about what the problem is. A. Well, this paging service is a strange thing unto itself. Normally a 35-megacycle or low-band frequency will cover great distances, but unfortunately in the paging service it does not, primarily for two reasons. And the first reason is that all of these paging stations normally are fulltime transmitting stations. There is a great deal of skip in this frequency band and, therefore, we get signals coming into Florida especially during that time of sunspot activity in 1957, 1958 and 1956, so that these signals from other stations such as Long Beach, California, from Birmingham, New Orleans, from all the surrounding country come in on top of us. This intermixes with our signal in our fringe area and makes it impossible to hear the intelligence transmitted on our station.

And the second reason is because of the lack of sensitivity of the small pocket carrier receiver. It is inherent in the very nature of the receiver that it requires a greater DBU signal to operate properly than does a crystal-controlled type receiver. These are all slug type tuned instruments. Therefore, the problem in Clearwater was that our people wanted paging service.

[Tr. 523]

You see, we are faced with a particular problem in Pinellas County, and that is that Tampa and Clearwater are inherently one trade area. We are more than a geographical area. We are a common people within the county. The businesses in St. Petersburg service not only St.

Petersburg service not only St. Petersburg accounts but the 20 or 25 municipalities also involved in Pinellas County because we are the large city. Our-- Well, automatic merchandising is an example of this. They have one office and they service the entire county out of this one office at this time.

Q. You mentioned Pinellas County and St. Petersburg. In what county is Tampa located? A. Hillsborough County.

Q. And-- A. What we did in this KIG-843, normally you have a circular pattern. So, because St. Petersburg is on the low south of the county, ending in a peninsula and water, with no use for a signal to the south of us, we attempted to work out engineering-wise a directional antenna so we would square our signal forward which would counter the balance of our signal which is elongated. This was an attempt to give good public service throughout the entire county.

Q. Of Pinellas County? A. Yes. And this also, of course, detracted from our St.

Petersburg signal so far as Hillsborough County is concerned because if you have a circular pattern and squeeze it into an elongated pattern, then you cut down not only the rear of it but you cut down the side coverage.

So, actually, we had less coverage in Hillsborough County after doing this.

Q. When was this application made, Mr. Pinson, for the directional antenna, KIG-843? A. I will have to rely on my memory. I just read that March 17 letter and I think it said in there it was in May of 1957.

Q. I appreciate your not giving these dates as firm dates. You are giving these from recollection and without checking the actual documents. A. Yes, sir. They are available and should be available in the Commission files and in our files.

Q. At this point, Mr. Pinson, I am merely trying to give the chronology by way of background rather than giving precise verifiable

testimony as to the exact dates.

Did you make application for a paging station in Jacksonville at or about this same time? A. Yes, sir.

Q. When was this, approximately? A. Sometime in 1957.

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[Tr. 533]

PRESIDING EXAMINER: We have identified the document, Mr. Newfield, as Charles P. B. Pinson, Inc., Exhibit No. 1. Are you at this point offering it into evidence or do you wish to wait until you get the copies?

MR. NEWFIELD: I wish to offer it right now if counsel will make it available to me.

PRESIDING EXAMINER: Are there objections, Mr. DeVore?

MR. DE VORE: Mr. Newfield, I assume you also have the same problem with Mr. Fields' letter.

MR. NEWFIELD: Yes.

MR. DE VORE: Or affidavit of the same date and the attachments to that document. If it will help you we will again make available copies of that letter and attachments.

MR. NEWFIELD: Yes, that is exactly what we would like to get into the record at this point, both of them, and the text.

PRESIDING EXAMINER: Can you place the Fields letter in evidence with this witness?

MR. NEWFIELD: Well, this witness signed that letter also, in addition to Mr. Fields.

PRESIDING EXAMINER: Do you object to Charles P. B. Pinson, Inc. Exhibit 1?

MR. DE VORE: No, no objection.

PRESIDING EXAMINER: Charles P. B. Pinson, Inc. Exhibit 1 is admitted into evidence.

[Tr. 534]

MR. NEWFIELD: May we go off the record so as to give the witness and ourselves an opportunity to examine it?

PRESIDING EXAMINER: Off the record for that purpose.

(Discussion off the record.)

PRESIDING EXAMINER: We will return to the record.

BY MR. NEWFIELD:

Q. Mr. Pinson, there has been presented to you a document which has been marked Charles P. B. Pinson, Inc. Exhibit No. 1, constituting a letter dated March 17, 1958 addressed to the Secretary of the F. C. C. and signed by you as president of Charles P. B. Pinson, Inc., sworn to and subscribed before a notary on that date, March 17, 1958.

I will ask you whether or not in your opinion, to the best of your knowledge, information and belief the statements which are made in that letter and which you signed were at the time they were made true and correct. A. They were, sir.

Q. I also direct your attention to a document consisting of a letter signed by James C. Fields on the same date, March 17, 1958, and addressed to the Secretary of the Commission--

PRESIDING EXAMINER: That letter is also signed by Charles P. B. Pinson, is it not?

MR. NEWFIELD: Yes, sir.

BY MR. NEWFIELD:

Q. Which also contains the signature of Charles P. B. Pinson, president of Charles P. B. Pinson, Inc., before a

[Tr. 535]

notary, stating that you have read the above statement by James C. Fields and that is a true and correct statement "to the best of my knowledge and belief"; and attached thereto is a photocopy of a newspaper excerpt dated March 6, 1958; a copy of an employment contract three pages in length apparently executed on March 13, 1958 by James C.

Fields and on the third page of which appears an acceptance by you acting as president of the Charles P. B. Pinson, Inc. of the contract and the terms of employment; also a one-page photocopy of a contract agreement purporting to be executed by the same parties on November 4, 1957; also a photocopy of a telegram addressed to James C. Fields and signed Mary Jane Morris, Secretary, originating from Washington at 5:57 p.m. with the receipt date 1958 March 10 P.M. 7:08; also a photocopy of what purports to be radio log, KIK578, and entry for March 10, 1958, last entry, as follows: Is that Tina (pronouncing)?

A. Tina (pronouncing).

Q. "Nora Douglas, station removed from air March 10, 1958 at 7:54 p.m. in response to telegraphic order from F.C.C."

Also, photocopy of a letter dated December 2, 1957 to you from the Robert Dollar Company. Also, photocopy of a conditional sales contract purporting to have been executed March 3, 1958 between James C. Fields and Charles P. B. Pinson, Inc. Also, check signed by James C. Fields dated March 3, 1958, No. 278, payable to the order of Charles P. B. Pinson, Inc. in the amount of \$741.77, on the reverse of which appears the endorsement.

[Tr. 536]

And lastly a letter dated March 3, 1958 purporting to be a photocopy of--I withdraw that.

Lastly, a letter dated March 3, 1958 addressed James C. Fields and containing your signature.

Now, Mr. Pinson, am I correct that you have examined these documents--and do they appear to be correct photocopies of the originals insofar as your memory is concerned?

PRESIDING EXAMINER: May I point out, Mr. Newfield, I believe these are all part of the Commission's official files, are they not?

MR. NEWFIELD: I believe they should be.

PRESIDING EXAMINER: Why don't you ask the witness to answer the question whether they are true and correct copies on the basis of his examination of the Commission's file?

MR. NEWFIELD: May we have the Commission's file?

(A file was handed counsel.)

PRESIDING EXAMINER: Have you examined the copies given to you from the Commission's files?

THE WITNESS: Yes, sir.

PRESIDING EXAMINER: Are these documents which have just been identified true and correct copies?

THE WITNESS: Yes, sir.

PRESIDING EXAMINER: As far as you can determine from an examination of that file?

THE WITNESS: As far as I can determine I believe them to

[Tr. 537]

be correct copies of the files.

PRESIDING EXAMINER: The documents will be identified as Charles P. B. Pinson, Inc. Exhibit No. 2.

(DOCUMENTS REFERRED TO WERE MARKED CHARLES P. B. PINSON, INC., EXHIBIT NO. 2, FOR IDENTIFICATION.)

PRESIDING EXAMINER: You have no objection to this exhibit?

MR. DE VORE: Has it been offered in evidence?

PRESIDING EXAMINER: Identified, not offered yet.

MR. NEWFIELD: We identified them.

PRESIDING EXAMINER: Do you wish now to offer them?

MR. NEWFIELD: Yes, we wish to offer them in evidence.

PRESIDING EXAMINER: Do you have objection?

MR. DE VORE: Mr. Examiner, I have no objection but I want it understood I am not waiving any right of cross-examination on any of those letters by permitting this exhibit to go in through this witness.

PRESIDING EXAMINER: You are not waiving any rights to

cross-examine Mr. Fields on this?

MR. DE VORE: That is correct.

PRESIDING EXAMINER: You would not be precluded from cross-examining Mr. Fields whenever the material in here relates to him.

MR. DE VORE: Thank you.

PRESIDING EXAMINER: It is a simple way to get it in the record, is what I had in mind. You have no objection now?

MR. DE VORE: No.

[Tr. 538]

PRESIDING EXAMINER: Charles P. B. Pinson, Inc. Exhibit No. 2 is admitted into evidence.

(CHARLES P. B. PINSON, INC. EXHIBIT NO. 2 WAS RECEIVED IN EVIDENCE.)

BY MR. NEWFIELD:

Q. Mr. Pinson, when I was describing the telegram from Mary Jane Morris to James C. Fields I may have given a wrong impression or may have stated it incorrectly, that it was received at 7:08 March 10, 1958. I believe actually that indicates the receipt of the message at the Western Union Telegraph office at St. Petersburg rather than the receipt by Mr. Fields. A. Yes. It says there, "7:48 p.m." down below.

Q. Now, Mr. Pinson, with reference to Exhibit No. 2 which has just been introduced into evidence I will ask you whether to the best of your knowledge, information and belief the statements contained in the letter itself are to the best of your knowledge at this time and at the time you signed your name to the letter true and correct. A. They are, sir.

[Tr. 539]

MR. NEWFIELD: That is all, Mr. Pinson.

PRESIDING EXAMINER: He will be available for cross-examination?

MR. NEWFIELD: Yes, sir. We want it understood, however, Your

Honor, that we are offering Mr. Pinson at this time in order to make merely a prima facie showing which I believe is in consonance with the agreement we had in Washington at the pre-trial conference, that the Commission would have the burden of going forward and the burden of proof with reference--

PRESIDING EXAMINER: Burden of proceeding with the evidence.

MR. NEWFIELD: Burden of proceeding with the evidence and the burden of proof with reference to the accusatory phases of the matters set forth in the hearing.

PRESIDING EXAMINER: Technically, of course, the burden of proof and the burden of proceeding with the evidence are almost inseparable in the cases, but technically at no point is the burden of proof on the Commission in the proceeding. However, once a general denial is entered, then the burden of proceeding with the evidence rests on the Commission counsel, and if they do not adduce satisfactory evidence, of course the general denial stands.

As I said, it is highly technical, but I do want you to recognize that strictly the burden of proof never rests on

[Tr. 540]

Commission counsel in a proceeding of this nature because it is for renewal and for construction.

As I say, we are getting into a highly technical discussion of evidence.

MR. NEWFIELD: Aside from the technicalities, I wish to make clear our feeling. I believe this was also shared by the Examiner in Washington, that when you get into the realm of charges or accusations which are made by the Commission--

PRESIDING EXAMINER: Viewed from the practical standpoint, the burden is on the Commission to sustain the charges; that is correct.

MR. NEWFIELD: Yes. And we have therefore merely put Mr.

Pinson on the stand to sketch generally the background and to identify the documents which are questioned, and to enter a general, what may be termed a general denial.

Affirmatively he has stated that, as far as he is aware, to the best of his knowledge, information and belief, what he signed his name to was true and correct.

There is only one other thing I would like to bring up at this time, and that is Mr. Pinson, with reference to the document which has been identified as Exhibit No. 2, was this document with all the attachments mailed by you to Washington or how did it leave you and come into the Commission's hands?

THE WITNESS: No, sir, together with my letter I person-

[Tr. 541]

ally delivered to Arthur Gladstone. I did not deliver it to the Secretary for filing. It passed directly from me to Arthur Gladstone.

BY MR. NEWFIELD:

Q Did you go to Washington for that investigation purpose? A. Yes, sir; on March 18, 1958. I went up there the night of the 17th.

Q. And you are now saying that both of these exhibits and the attachments to the second exhibit were delivered manually by you to Mr. Gladstone in Washington on or about March 18, 1958? A. That is correct, sir.

MR. NEWFIELD: That is all. We reserve the right to recall the witness.

PRESIDING EXAMINER: You certainly have that right.

MR. DE VORE: Mr. Examiner, for clarification purposes I would like to know whether Mr. Newfield is now saying that he has made out a prima facie case on behalf of both applicants, or is he just resting his case with regard to Mr. Pinson and Mr. Pinson's corporation?

PRESIDING EXAMINER: You have no intent to imply you were not calling Mr. Fields, do you, Mr. Newfield?

MR. NEWFIELD: No.

MR. DEVORE: Let me point out then that the record is

[Tr. 542]

deficient with regard to Issue No. 5 in the dockets relating to Mr. Pinson's corporation. There has been no testimony as to the financial relationships either between C. P. Pinson, Inc. or Charles P. Pinson and James C. Fields.

MR. NEWFIELD: I don't know what the Commission has in mind when they talk about determining the legal, financial and other relationships heretofore and presently existing.

PRESIDING EXAMINER: Do not the exhibits that have been offered in evidence cover portions of that, those relationships? Or, to the best of my knowledge, the entire relationship?

MR. DE VORE: No, I don't believe so, Mr. Examiner. The financial relationships are not explained by the documents. All we have is a contract for the operation. We don't know what participation either of the parties has or the accounting which has been made between the parties, what expenditures have been--

PRESIDING EXAMINER: Mr. DeVore, I am not going to direct Mr. Newfield how to try his case. Will you proceed with cross-examination.

MR. NEWFIELD: May I just say this, Your Honor. With reference to Issue No. 5 on Page 3 of the Pinson order, Mimeo 88810, we have furnished to counsel for the Commission what I believe to be all of the records which are in existence between the two parties pertaining to the operation

[Tr. 543]

of the Fields paging station. Literally, of course, if one were to take the language of this Paragraph 5 and would undertake to set up defensively or to give evidence defensively concerning all of the legal, financial and

other relations since either of these individuals were together on the face of the globe and to bring it down to the present time, the legal, financial and other relationships, I submit that is an impossible burden.

PRESIDING EXAMINER: Well, as I stated, I recognize the availability of records to Commission counsel, and, insofar as my previous statement is concerned, I am not going to direct you how to try your case, nor could I if I so desired.

Will you proceed, Mr. DeVore.

MR. DEVORE: Mr. Examiner, I don't want it to be understood that any of these documents which Mr. Newfield has made available to us are in any way considered part of this record.

PRESIDING EXAMINER: They are not considered a part of this record at this time, nor will they be until they are offered into evidence. I think Mr. Newfield recognizes that, do you not?

MR. NEWFIELD: Yes, yes indeed.

MR. DEVORE: I also want it understood that the fact that we make an examination, let us say, of these records

[Tr. 544]

and in no way refer to them would not in any way be an elimination of this matter as an issue in the proceeding. I think there is a certain burden of proof with regard to the issue, and I don't want it to be indicated that we in any way believe that the applicant has satisfied his burden of proof in this proceeding, even for a prima facie case.

I am not suggesting that you direct the applicant to proceed in any way, but I want our position to be completely understood with regard to Issue 5.

PRESIDING EXAMINER: That is a position to take after the record has been completed and at the time proposed findings of fact and conclusions of law are filed.

Will you proceed now, please.

MR. NEWFIELD: May I ask counsel if he has this volume I had a

moment ago on the Fields station? Thank you.

MR. DE VORE: May we have a few minutes' recess before we initiate cross-examination?

PRESIDING EXAMINER: Yes, we will. We have run for a long period.

(At this point a short recess was taken, after which the hearing was resumed.)

PRESIDING EXAMINER: The hearing will be in session.

MR. NEWFIELD: Mr. Examiner, in light of Mr. DeVore's comments a few moments ago as to Issue 5, I should like to

[Tr. 545]

ask Mr. Pinson one or two questions relating to the legal, financial and other relationships heretofore and presently existing between Mr. Pinson's company, Mr. Pinson individually and James C. Fields.

PRESIDING EXAMINER: You have no objection, have you, Mr. DeVore?

MR. DE VORE: No objection.

BY MR. NEWFIELD:

Q. Mr. Pinson, I believe you testified earlier that you are a son-in-law of Mr. Fields. Is that correct? A. That is correct, sir.

Q. You married his daughter? A. That is correct, sir.

Q. Are you the father of one or more of his grandchildren? A. Two grandchildren, sir: Barbara and Charles.

Q. Will you state the ages of these children? A. Barbara was five in August of this past year. Charles was four in December of this past year.

Q. Do you have any contracts with Mr. Fields? I say "you". I mean either you individually or Pinson company. Any contracts other than the two contracts to which you have referred and which are made a part of Exhibit No. 2 which is now in evidence? That is to say, the two

contracts of employment between the Pinson company and Mr. Fields relating to

[Tr. 546]

the pocket paging station. A. Yes, we have such a contract, Mr. Newfield. We also, as I said in the record before, have done certain construction work for them and built their carport for them. We fixed up their 9th Avenue apartment house, poured some concrete in his residence. We have gone to dinner together. He has paid for dinners for my family, and I have paid for dinners for his family. We have had a normal family relationship existing between us for a great many years.

Q. Are you furnishing the money, any money to him for the operation of the paging station in Tampa which he owns? A. No, sir. I think Mr. Fields is a little more wealthy than I am, by far.

PRESIDING EXAMINER: Mr. Newfield, would you, for your own purposes, have the reporter read the witness' answer back to your first question?

MR. NEWFIELD: The first question?

PRESIDING EXAMINER: Yes, as to whether or not they have any contracts other than those which have been submitted into evidence.

Will the reporter read back.

(The record was read by the reporter.)

BY MR. NEWFIELD:

Q. Mr. Pinson, I take it when you refer to these--refer to construction work, you meant to indicate that there

[Tr. 547]

was some kind of a contractual understanding between the two of you that for money which your company advanced in connection with this construction work you would be repaid? A. That is correct. I believe there are three occasions that we did repair work and things for them and we were paid on those occasions.

PRESIDING EXAMINER: May I ask a question. By your answer did you mean to say there were contracts between you, your company rather and Mr. Fields other than these two contracts which have been admitted into evidence?

THE WITNESS: Well, let us put it this way, sir: They are not-- Anything is a contract, sir. In other words, we went out and wanted to build a carport. We built it for him. He paid for it.

PRESIDING EXAMINER: I said with reference to the one-way signal station of Mr. Fields.

THE WITNESS: No, sir, other than an amendment which changed the percentage from 30 to 50 percent which we were--

PRESIDING EXAMINER: Thank you. That is what was disturbing me. I had interpreted the witness' answer to say there were other contracts relating to the paging service.

MR. NEWFIELD: I think he did, Your Honor. I appreciate your clarifying it.

BY MR. NEWFIELD:

Q. So that, in summary, these two contracts relating

[Tr. 548]

to the operation of the pocket paging station are the only formal contracts in writing that you know of which have ever been in existence between you and Mr. Fields or between Mr. Fields and the Pinson company. Is that correct or is there some other contract? A. That is correct, sir, other than the amendment as I told you there, some 30 to 50 percent, and, as Mr. Gladstone told me in Washington, you do not have to file these percentage things. They weren't interested in them. So we didn't file it.

Q. There was an amendment to the percentage of the participation in profits from the operation of the station? A. Yes, sir, from 30 to 50 percent because we found we couldn't handle it on the basis on which

it was being done.

Q. Right. A. The 50 percent was the normal percentage.

Q. From time to time have--has the Pinson company advanced monies on behalf of the Fields pocket paging station without any settlement other than those which are indicated in the periodic settlement sheets which we have made available to Commission counsel? A. No, sir; all of the settlements of accounts on the paging station are set forth in those accounts. Monies due and monies owing, the amount of money collected and so forth.

Q. Has Mr. Fields furnished capital to you for any

[Tr. 549]

purpose at any time? A. No, sir. The only money that he has ever furnished or paid to the company is these construction jobs which was value received on these three small little things. He has never advanced money to me or loaned me money of any kind. There are no loans outstanding between us either personally or the corporation.

Q. Mr. Pinson, have you to your knowledge been found guilty of violating any federal statute relating to income tax? A. I have not, sir.

Q. Have you been found by competent authority, insofar as you know, to have violated any federal statute pertaining to wages and hours of employees? When I say "you" I mean the Pinson company. A. No, sir, we certainly have not.

Q. Have you individually been found guilty of such violation? A. No, sir.

Q. When I say such violation I mean violation of any federal statute relating to income tax or pertaining to wages and hours of employees.

A. No, sir. The only thing we have ever had, we signed a consent decree one time. We still maintain it wasn't worth the money that it would take us to take it to the Supreme

[Tr. 550]

Court of the United States to say we are in interstate commerce because we have a telephone, as they maintained in a 47-page mimeographed form, which I think would put everybody in the United States under Wage and Hour.

Q. Have you ever been convicted of any crime involving moral turpitude or any felony? A. No, sir.

Q. Mr. Pinson, in my general questions I do not mean to imply that--and I want to make clear on the record--I want you to make clear on the record whether you intend to take the position or state that through inadvertence or otherwise you or the Pinson company may not have failed to comply with some rule or regulation, technical or otherwise, of the Federal Communications Commission. Will you state whether or -- will you state what your position is in regard to that possibility?

A. We have always attempted to abide by all the rules and regulations of the Commission, as I think the Commission's own records show here in the files. We have engaged in lengthy conversations with them. I have gone to national meetings to attempt to learn their position. We have sat down in conversations with them. We have written them letters. We have hired attorneys. We have done everything that we can to operate properly at all times. We have attempted to hire and use only personnel of the highest

[Tr. 551]

qualifications in the maintenance of our equipment, certified by their licensing of these personnel.

We have done everything that is possible for us to do to run a business properly under the FCC rules and regulations.

MR. NEWFIELD: I request that the Trial Examiner take notice of, and I wish to move formally that there be incorporated in the record of this hearing by a later reference all financial and other statements and

exhibits which have been filed by Charles P. B. Pinson, Inc. in connection with the stations on which renewal applications are pending.

MR. DE VORE: Mr. Examiner, if Mr. Newfield can identify what documents he has reference to, I would be in a better position to respond to his motion.

PRESIDING EXAMINER: I would have to have more adequate identification. You ask for everything that has ever been filed with the Commission, and obviously a lot of it would be completely immaterial and irrelevant.

MR. NEWFIELD: Well, I think obviously the financial--

PRESIDING EXAMINER: There is something else I would like Commission counsel to answer for me, if they can.

Are the financial reports of the stations regarded as confidential information as they are with broadcasting?

MR. DE VORE: You mean the annual reports to the Commission?

PRESIDING EXAMINER: Yes. * * *

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[Tr. 554]

CROSS-EXAMINATION

BY MR. DE VORE:

* * * * *

[Tr. 567]

Q. In any event, you withdrew your application for the Tampa one-way signaling station on October 17, 1955, as indicated by the letter which I asked the Examiner to take official notice of? A. I don't know about your letter, but I do know it was

[Tr. 568]

some time in October, 1956.

Q. 1955. A. 1955, yes.

Q. When was the Fields application for one-way signal service filed with the Commission? A. As I remember it, in October of 1956, a year after the date you are talking about.

Q. Mr. Pinson, who prepared the application which was filed on behalf of Mr. Fields for the one-way signaling station in Tampa?

A. I imagine I helped him with it as I have on many occasions.

Q. Do you know or don't you know whether you prepared any part or all of the application which was filed on behalf of Mr. Fields for the one-way signaling service? A. Of my own memory I don't remember, but I imagine it was typed in our office and I helped him with it as he helped me with other communications problems.

Q. What sort of help did you give him? A. To show him how to fill out the forms without paying \$300 or \$500 to the FCC Bar Association.

Q. Did you prepare any of the exhibits attached to the application?

A. Yes. I paid dear money to learn how to prepare those.

[Tr. 569]

Q. Did you prepare all of the exhibits attached to the application?

A. I don't know. I don't remember the application six years later.

Q. Mr. Pinson, who transmitted the application to the Commission?

A. I don't know, sir.

Q. Did you? A. I don't even remember.

Q. Did you transmit it? A. Did I hand it to them?

Q. No. A. I don't know truthfully. I don't remember.

Q. Did you send it to the Commission or did Mr. Fields send the application to the Commission? A. I have no way of remembering, sir.

Q. Would you state that you did not transmit the application--

MR. NEWFIELD: I object to this line of questioning. I think it is incompetent, irrelevant and immaterial, how the thing was transmitted, whether he transmitted it, whether he helped prepare it or didn't help prepare it.

PRESIDING EXAMINER: I will not sustain the objection on the basis on which it has been stated, and--

MR. NEWFIELD: Well, on the grounds that it is incompetent,

[Tr. 570]

irrelevant and immaterial.

PRESIDING EXAMINER: I will not sustain the objection on that basis.

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	[Tr. 582]		
Tampa, Florida		February 27, 1961	
*	*	*	*
	[Tr. 586]		
*	*	*	*
CROSS-EXAMINATION (Resumed) BY MR. DeVORE:			
*	*	*	*
	[Tr. 604]		
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Q. Were the documents--that is, Exhibits 1 and 2, Pinson Exhibits 1 and 2--typed in your office by your personnel? A. Oh, yes, I imagine so.

PRESIDING EXAMINER: Do you know whether they were or not?

THE WITNESS: Yes. In other words, we have got the typewriters, the paper; we have got everything. I imagine we worked together right there at the office and they were typed and prepared in our office. When they were executed I don't know.

PRESIDING EXAMINER: As I understand your testimony, it is that they were typed, they were prepared in your office?

THE WITNESS: Yes, sir.

PRESIDING EXAMINER: Again you were using the words "I imagine."

BY MR. DeVORE:

Q. Do you remember who typed the affidavits? A. Well, I only have one office personnel there, a Kenneth Bromhard, who is bookkeeper, secretary, general office manager in charge of the whole business, and also from time to time we have used various operators to do typing at night and what-have-you.

These were prepared in the daytime to the best of my recollection. So I imagine Mr. Bromhard typed both of them.

[Tr. 605]

PRESIDING EXAMINER: Again do you imagine or do you know?

THE WITNESS: I don't know.

PRESIDING EXAMINER: Thank you.

THE WITNESS: These are very long, involved instruments. I could have handed it to one of the girls in the back and had her type it, an operator who wasn't busy at the moment. That has been our custom from time to time.

BY MR. DeVORE:

Q. Did you hand it to anybody other than Mr. Bromhard for typing?

A. I don't remember who I handed it to.

Q. Mr. Pinson, you just stated that Mr. Bromhard was the one that did the typing in the office. Would you have handed it to anyone else if he was the one doing the typing at that time? A. If he was busy doing something else and I had a girl on the board who was not doing something and I had a vacant typewriter, I would have given it to her to do, which has been our custom over the years. Or I might have given it to him and he prepared it, or given it to him and he gave it to somebody else, a girl to do it. We are just beating the point. We have eight or ten people in the office. I don't remember exactly.

Q. Included in Pinson Exhibit No. 2 is a copy of the conditional sales agreement between yourself and your father-

[Tr. 606]

in-law concerning the sale of a transmitter. When was that document executed? A. To the best of my memory, it was dated on March 3, and I assume it was typed and executed that day. I don't remember the actual time we signed it. Our normal policy is to sign things at the time they are ready.

Q. That is what I am trying to establish. The document bears the date of March 3. Was it executed on March 3? A. To the best of my recollection, it was, sir. You are asking us about something 3 or 4 years ago, sir.

Q. Was it executed subsequent to your call to Mr. Gladstone on or about March 12? A. You mean after his call?

Q. Yes. A. Afterwards?

Q. Yes, afterwards. A. No, sir, because I discussed it with him on the telephone.

Q. There is also a letter dated March 3, 1958, attached and included in Pinson Exhibit No. 2. Do you remember that letter which is addressed to Mr. Fields? A. Yes. You are referring to the letter that sets forth the monies he owes us.

Q. Yes. A. For the transmitter and installation costs and

[Tr. 607]

antenna and all allied items.

Q. Yes. A. Yes, I remember it.

Q. What was the purpose of writing that letter to Mr. Fields?

A. Very simple: to show him how we expended all his money. We had costs over and above the transmitter. We had costs of hauling, installation of antennas and lines. We gave him a record of this because, of course, a man wants to know what you have done with his money before he pays for it.

Q. Was this supposed to represent the entire transaction between yourself and Mr. Fields concerning the construction of the station in Tampa? A. Yes, up to that time. Whoever sent all the equipment and the installation, labor and what-have-you.

Q. Did Mr. Fields ask you to put these matters in writing? A. Yes. He thought that because of our family relationship it would be better to have it in writing this way. This is the policy that we have followed even

on such minor items long before this of when we did construction work or what-have-you for him, that we would submit bills and total it for him to be circumspect and correct.

Q. Have you put any other matters into writing other than those described in the letter of March 3, 1958, and the

[Tr. 608]

two contracts for employment between yourself and Mr. Fields, one dated November 4, 1957 and, the other, March 13, 1958, concerning the operation of the station in Tampa? A. We have put all the accounting between us in writing as is proper. Even such items as carports and these other items, pouring concrete at his place. The matters relating to the paging station. All of these matters have been circumspect and correct, and they have all been in writing, sir.

MR. DeVORE: Please read back my question.

(The record was read by the reporter.)

MR. DeVORE: Mr. Examiner, I ask to strike the answer as not responsive to the question.

PRESIDING EXAMINER: The answer will be stricken both as not responsive and as cumulative.

The question, Mr. Pinson, was any other contract with relation to operation of Mr. Fields' station.

THE WITNESS: I believe that I testified the other day, sir, in the record that there was an amendment to the contract changing the percentage from 30 to 50 percent. Other than that, I mean all of the activities of this station and all other financial transactions between us have been in writing.

BY MR. DeVORE:

Q. By "all other transactions have been in writing" do you mean that the books of accounts or the statements and records which were

produced in this proceeding represent the

[Tr. 609]

writings which exist between yourself and Mr. Fields concerning the Tampa station? A. Yes.

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[Tr. 642]

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PRESIDING EXAMINER: I think the question was answered, Mr. DeVore. Either that or I sustained an objection to it. I do not recall specifically. It is now cumulative, and I am sustaining the objection.

BY MR. DeVORE:

Q. Mr. Pinson, did you or did you not as president of Charles P. B. Pinson, Inc. solicit or contact prospective customers for Tampa Pocket Paging Service in October of 1956, the month in which Mr. Fields signed the application for a one-way signaling station in Tampa?

MR. NEWFIELD: We object to that as incompetent, irrelevant and immaterial. It doesn't make any difference if he did.

PRESIDING EXAMINER: The objection is overruled.

THE WITNESS: I don't remember, but I imagine it is possible. We had to make a showing, I believe, in this thing that if there is a need for the service, you are supposed to go around and solicit and what-have-you. In other words, ask people can they use this thing. I think it is in one of the affidavits, and I told you that I helped him prepare this application.

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[Tr. 661]

PRESIDING EXAMINER: I think the witness should be

[Tr. 662]

permitted to explain, Mr. Newfield. If you wish to enter a formal objection --

MR. NEWFIELD: No, I withdraw.

THE WITNESS: I imagine he was thinking of it in the same light that it actually did function with a contract employee. He was thinking of Telephone Answering Service of Tampa, how it was doing. In other words, he never visualized, I think -- these documents maybe that you refer to here -- having his own employees or having his own office here, but operating through a contract employee.

BY MR. DeVORE:

Q. And this is what Mr. Fields meant when he referred to your station in St. Petersburg as doing so well? A. I imagine he took the revenue from my station and interpreted it in light of how he planned to operate this other operation. This would seem to be normal to me, which, incidentally, is a very -- turned out very well.

MR. DeVORE: I move to strike.

PRESIDING EXAMINER: The motion is granted.

BY MR. DeVORE:

Q. Mr. Pinson, between the time that the application for the Tampa one-way signaling station was signed and the time when it was filed, did you have any conversations with Mr. Fields concerning the manner in which the Tampa one-way signaling station could be operated?

[Tr. 663]

A. Well, I imagine I have told him about contract employees.

PRESIDING EXAMINER: When you answer you say you imagine. Do you know whether you did or did not?

THE WITNESS: Well, I know that he anticipated working through a contract employee at the time he filed this thing because he has told the Commission in the letter, a letter which I signed, sir --

PRESIDING EXAMINER: Did you have conversations during the period concerning which counsel asked with Mr. Fields?

THE WITNESS: He is my father-in-law and I helped him with the application, and I saw him off and on all week long. Whether I can swear under oath I had a specific conversation on a specific day, I want to be honest and above board, but, at the same time, I don't want to be put in a position where what I say is incorrect to you.

BY MR. DeVORE:

Q. Mr. Pinson, you have indicated that --

PRESIDING EXAMINER: Let me ask one more question. In other words, your answer is that it is logical to think that you did, but you do not specifically remember whether you did or did not?

THE WITNESS: That is correct, sir.

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[Tr. 708]

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BY MR. DeVORE:

Q. Mr. Pinson, you just mentioned the change in location

[Tr. 709]

or proposed change in location of the antenna from the First National Bank Building to the Wallace S. Building. Who conducted the negotiations with the Wallace S. Building for the rental of the roof space? A. I just told you. He instructed me to find a place, and I did.

Q. You carried on the negotiations for the Wallace S. Building?

A. Yes, for the very simple reason that the rental agent who had charge of it had charge of another building we were leasing here in town. The Stovall Building.

Q. Was there ever any lease executed between the parties for the roof rental? A. Yes, I think we have an agreement with them. I am not sure. I don't even know whether we have one on the Stovall or not, the building.

Q. Do you have a written agreement? A. I don't know, sir. I don't even know whether we have one on the Stovall Building. Perhaps we do; perhaps we don't. At any rate, there is an agreement between us.

Q. Between whom? A. Between my company and the Stovall Building and the Wallace S. Building. In other words, we rent both of these roofs.

Q. The agreement is between the Charles P. B. Pinson

[Tr. 710]

corporation and the Wallace S. Building, is it not? A. Well, no, sir, it is not. It is between them and Mr. John Wright, who is the rental agent for both the Stovall Building and the Wallace S. Building.

Q. All right. The agreement then is between the Pinson corporation and Mr. Wright. Is that right? A. John Wright, Inc., I believe.

Q. For the roof rental or for the rental of the roof space on the Wallace S. Building where Mr. Fields' antenna is located; is that correct? A. Correct.

Q. Do you have any other facilities located on the Wallace S. Building other than the antenna for Mr. Fields? A. No, sir.

Q. When did you make the lease with the Wallace S. Building? When was the lease executed for the rental of roof space on the Wallace S. Building? A. I don't know. There is no point in guessing. I don't know.

In the original lease I can look it up for you, or inquire from the rental agent.

Q. Mr. Pinson, in connection with obtaining space in the Wallace S. Building were you asked to supply the Wallace S. Building with proof of liabilityship insurance to cover any accidents or damage that might occur on the Wallace S.

[Tr. 711]

Building? A. We did better than that. We covered with an insurance policy both the Wallace S. and the Stovall. This is one of the main reasons I negotiated for Jim, because these companies are very particular who gets on these roofs. They don't rent these roofs to just anyone.

MR. DeVORE: I ask that the last answer be stricken as not responsive.

May I ask that the question be read back?

PRESIDING EXAMINER: I recall the question. I am denying the motion because it does tend to explain the previous question asked and answered.

BY MR. DeVORE:

Q. In whose name was the policy issued? A. Charles P. B. Pinson, Inc.

Q. Was there a separate policy issued for the Wallace S. Building? A. Separate policy? Oh, no. We carry one liability policy on everything the company owns.

Q. I show you a certificate of insurance with the Pacific Indemnity Company, and ask you whether or not that indicates that there was a policy of insurance issued covering the Wallace S. Building.

MR. NEWFIELD: May I see this before you answer it?

PRESIDING EXAMINER: Will you permit counsel to examine

[Tr. 712]

the letter?

MR. DeVORE: Yes.

MR. NEWFIELD: I object to the question on the grounds that the contract is the best evidence, what it provides.

MR. DeVORE: Mr. Examiner, I am merely asking him whether this document refreshes the witness' recollection. I haven't offered it in evidence.

PRESIDING EXAMINER: Will the reporter read the question back, please, the last one.

(The record was read by the reporter.)

PRESIDING EXAMINER: I am overruling the objection. This is a certificate of insurance, Mr. Newfield, and not just a letter.

MR. DeVORE: Mr. Examiner --

PRESIDING EXAMINER: Will you respond to the question.

THE WITNESS: Yes. It is impossible, Mr. Examiner, to answer the question in the form it was asked.

PRESIDING EXAMINER: Is that a certificate of insurance for the Wallace S. Building?

THE WITNESS: No, sir. What it is is a certificate -- In other words, the way he worded it, if we had a new policy issued for the Wallace S. Building. All this is is a certificate that the Wallace S. Building is covered under our existing insurance policy, which it clearly shows. This was, for instance, in effect from January 1, 1958 to January 1, 1959.

[Tr. 713]

This is dated 6 June 1958. We didn't go out and buy a special policy, no, sir. This policy was in effect all the time.

PRESIDING EXAMINER: Thank you.

BY MR. DeVORE:

Q. In other words, Mr. Fields' antenna was covered by a policy of insurance issued to the Charles P. B. Pinson corporation; is that correct?

A. We leased the space to Mr. Fields. We bill him for it. It all is shown on your records, sir, and we report it to the Commission.

Q. Who paid for the insurance? **A.** I don't think there was any additional cost to this. I never remember receiving an additional bill from Mr. Swann for it. And this was also done on the other buildings I lease.

Q. Did you allocate any portion of the insurance premiums which you paid to Mr. Fields to cover the liability that might arise on the Wallace S. Building?

MR. NEWFIELD: I object to that. The witness testified as he recalls there was no additional premium.

PRESIDING EXAMINER: I am overruling the objection. This question was had he allocated as a result of adding these premises a proportionate cost of the policy to Mr. Fields' operation. I think it is material and relevant.

THE WITNESS: No, sir, for a very simple reason. We didn't receive any additional bills to allocate, nor did we

[Tr. 714]

receive any additional bill on the other two roofs that were also covered about this same time which it seemed was a good idea. There was nothing to allocate; so we didn't allocate. No additional cost resulted as I remember it.

BY MR. DeVORE:

Q. I wasn't suggesting that any additional cost accrued because of the inclusion of Mr. Fields -- inclusion of the building on which Mr. Fields' antenna was located under the coverage of the policy. I was merely asking whether, as a matter of business, you allocated a portion of the premium which you were paying for insurance to Mr. Fields since he was deriving benefit from the coverage of the policy. A. I don't know that he was deriving benefit. He wasn't insured. The building was insured and we were insured.

PRESIDING EXAMINER: Your answer was you did not allocate any part of the costs as operating cost to Mr. Fields' operation.

THE WITNESS: No, sir, because there was no additional cost. This would be padding up the books, plain and simple. Take a cost that we had before, Mr. Examiner, and we add something that doesn't cost any extra,

and then we charge him that part of what we paid before.

BY MR. DeVORE:

Q. For whose benefit was the coverage of the policy

[Tr. 715]

extended to the Wallace S. Building?

MR. NEWFIELD: I object to that.

PRESIDING EXAMINER: The objection is sustained, Mr. DeVore. You are now questioning the business practices of the corporation, as to whether they are proper or improper. But you have the definite factual information that it was not.

MR. DeVORE: Mr. Examiner, if I remember the answer -- the last answer of the witness, he mentioned that it was the corporation that was being protected, and I think the question here is who needed the protection. If it was Field's antenna.

PRESIDING EXAMINER: That is a matter that is subject to argument. You have now adduced the facts involved, however. Whether it is a proper bookkeeping practice is not going to change the facts.

BY MR. DeVORE:

Q. Mr. Pinson, who conducted the negotiations with the Robert Dollar Company with regard to the transmitter which was purchased for Mr. Fields? A. I did as I plainly stated in the March 17 letter.

Q. Did you make a down payment in connection with the purchase of Mr. Fields' transmitter and the other transmitter which was purchased from the Dollar Company? A. Yes, sir. There was a down payment and monthly payments.

Q. When was the down payment made?

[Tr. 716]

A. I couldn't tell you. I think I sent you a letter or a copy of a letter.

* * * * *

[Tr. 720]

* * *
 THE WITNESS: ***
 * * *

[Tr. 721]

* * *
 There is also a notation on this ledger card to the effect that the percentage due Pinson, Inc. was computed at 25 percent rather than 30 percent, and therefore an additional 5 percent of total sales was due, leaving due as of that period as an overpayment \$149.85.

BY MR. DeVORE:

Q. Mr. Pinson, what was the card that you were first referring to?

A. It is marked "Conditional Sales".

Q. This is a ledger card which your company maintained concerning the conditional sale of a transmitter from your corporation to Mr. Fields? A. That is correct, sir.

Q. Does that card indicate that there were bills sent to Mr. Fields in April, in May and in June, each for \$100.22? A. I assume so. That is what is normally meant by it.

Q. Were those charges ever paid by Mr. Fields? A. Yes. They were paid on the statement. You will notice on the reports which we handed you for 1958 Mr. Fields had approved a credit with us of monies collected of \$162 in May; June, \$313.80; and of July \$381.40. So he had accrued many more credits due him from our company than of these payments due from him to us.

Q. Mr. Pinson --

[Tr. 722]

A. Therefore, obviously this is merely an accounting transfer, sir. We were well covered. We had more of his money than he had of ours.

Q. Are you sure of that? A. Yes, sir.

Q. Let me point out for you, you do on your accounting for 1958 show in the month of March the following expenses incurred on Mr.

Fields' behalf: \$15 for roof rentals, \$33.78 for maintenance, and \$4.40 for phone lines. You incurred the same charges in April of 1958. Did you have any revenues in March or April? A. No, we did not.

Q. So that at the end of April Mr. Fields, in effect, owed you the total of those expenses incurred during March and April plus the payment on the transmitter which was supposed to have been paid in April?

A. That looks like about \$160. I wouldn't exactly worry about his credit in this regard. We have many accounts who are greatly in excess of this.

Q. In May you had --

Let me correct my prior statement.

In April you did not have the same amount of expenses as in March. You have \$15 for roof rental, \$15 for maintenance, and \$4.40. A. \$34.40.

[Tr. 723]

Q. For phone line.

In May you also had roof rental expense of \$15, maintenance of \$75, and \$4.40 for phone line. A. Yes.

Q. In May you would also have accrued another \$100.22 owing on the conditional sales contract. That would make it \$200.44 owing on the conditional sales contract alone. In May you only had revenues of \$162. So that the amounts owing on the conditional sales agreement alone exceeded the revenues in May without taking into account the expenses incurred on behalf of Mr. Fields in March, April or May. Isn't that correct?

MR. NEWFIELD: I object to this line of questioning. I think it is argumentative and --

PRESIDING EXAMINER: It is not argumentative. It is cross-examination. Remember, Mr. Newfield, these ledger sheets to which they are referring are not a part of the record.

MR. NEWFIELD: We will be glad to make them a part of the record.

PRESIDING EXAMINER: That, of course, is your election, but they have not yet been made a part of the record.

Will it shorten the cross-examination if they were made a part of the record, Mr. DeVore?

MR. DeVORE: I'm sorry. I didn't hear you.

[Tr. 724]

PRESIDING EXAMINER: Would it shorten the cross-examination if these sheets were made a part of the record?

MR. DeVORE: Yes. I have no objection to either the ledger card, which Mr. Pinson has referred to, relating to the conditional sales or the accounting for the year 1958 being made part of the record.

MR. NEWFIELD: Mr. Examiner, I don't believe we have sufficient copies to furnish the reporter and all counsel at this point. But we will be very happy to make copies available and formally introduce them into evidence.

PRESIDING EXAMINER: We will identify those ledger sheets as Charles P. B. Pinson, Inc. Exhibit No. 3, and I will ask the reporter to so mark it.

(THE DOCUMENTS REFERRED TO WERE MARKED PINSON EXHIBIT 3, FOR IDENTIFICATION.)

PRESIDING EXAMINER: We will go off the record while the documents are being checked by counsel for the Commission.

(Discussion was had outside the record.)

[Tr. 725]

PRESIDING EXAMINER: We will at this time return to the record. In view of counsel's position as to the full amount of material included, Mr. Newfield has withdrawn his offer to submit them as an exhibit. I

wish the record to show that my statement that the documents will be identified by the reporter as exhibits is no longer effective.

BY MR. DeVORE:

Q. Mr. Pinson, you testified, did you not, that in effect Mr. Fields was ahead of the game because he had these revenues accruing in various months? A. Yes, sir. I have anticipated that question so I have added them together here and all of the expenses which accrued to the end of June plus \$300-odd of payments which were due and normally you have 30 days to make any payment in normal business, and the amounts as \$514 and in May and June he had \$152 revenues to him, \$313.80 the month of June. Remember, this is around the first of June, and which makes a total of roughly \$475. So at that stage in the game it is obvious we were going to continue in the upward swing. In other words, we are only behind the difference of \$29, \$35, or \$40 -- it is reasonable to assume it is going.

Q. Mr. Pinson, doesn't \$475.80 in June just represent sales, it does not represent collections, does it? A. Well, that is quite true, but the way it was based at this time, this was the sales figure itself, yes, but we were

[Tr. 726]

taking all the accounts he kept during that time and being responsible for them in an attempt to be fair.

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[Tr. 733]

PRESIDING EXAMINER: May I see the contract again? I do not recall it specifically relating to a split of services.

I am overruling the objection, Mr. Newfield, because the contract itself does not have any specific provisions that I can notice with regard to this matter. Will you answer the question, please? If you can point out some place in the contract where it does --

MR. NEWFIELD: Which contract are we talking about ?

MR. DeVORE: Either of the contracts which were executed between the parties and included in Pinson Exhibit No. 2.

MR. NEWFIELD: Well, I think on page 2, there is a reference in paragraph (b) on the March 13, 1958 contract.

PRESIDING EXAMINER: Can you point out where that makes reference for the \$4 charge which is to be retained by Charles P. B. Pinson, Inc. ?

MR. NEWFIELD: No, there is no reference to the charge.

PRESIDING EXAMINER: That is the question. Apparently there is no provision in there that they are the ones to receive the \$4 charge, and the question has all gone to that charge.

Will you read the last question asked of the witness ?

(Question referred to was read by the reporter.)

THE WITNESS: Apparently, there is a provision here in section (b), Mr. Fields is to provide the receivers with their components, Mr. Fields asked us if we would provide the receivers, which we did, we were in the normal business of leasing equipment to others.

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[Tr. 756]

MR. DeVORE: May I ask the volunteer statement be stricken from the record ?

PRESIDING EXAMINER: The motion to strike is granted.

BY MR. DeVORE:

Q. As I understand your testimony, Mr. Pinson, Mr. Fields did not own any pocket phone receivers during the year 1958, did he ? A. That is correct.

Q. Did he own any pocket phone receivers during the months of January, February and March of 1959 ? A. No, sir, not to my knowledge.

Q. When did he acquire pocket phone receivers? A. Mr. Gladstone came to St. Petersburg the latter part of March or first part of April 1959 and suggested certain changes be made. One of the things he wanted was have a separate column in our books, he wanted a separate journal, he tells us we ought to have names on the doors, he felt that the pocket phone should be owned by Mr. Fields, he thought that the receivers should be in Mr. Fields' name -- all these things transpired simultaneously, these were the suggestions Mr. Gladstone made for us to carry them out.

Q. Did you in effect transfer the same pocket phone receivers to Mr. Fields which had been used during 1958 in providing service in Tampa?

[Tr. 757]

A. Probably was.

Q. How many customers did you have there at the end of 1958?

A. I don't have any idea without checking the records. We had monthly reports and such.

Q. Let me amend that question. How many customers did Tampa Pocket Phone Paging Service have at the end of 1958? A. May I have Mr. Fields' files, Mr. Newfield? I think that is in there.

(Documents were handed the witness.)

THE WITNESS: I am sorry, I cannot answer that. The latest reports that we have are for January of 1960 in this file, and it gives 68 accounts as of that time. We can get the other report, similar report available for each time period.

BY MR. DeVORE:

Q. Mr. Pinson, where did you get the receivers that you used during 1958 in connection with the provision of pocket phone paging service in Tampa? A. We bought these receivers.

Q. When did you buy them? A. Some of them were bought in 1958, some were bought in 1959, I believe, I think some bought in 1957, the majority in 1958 and 1959. As a matter of fact, a great many of them were bought in 1959 because Mr. Bomhard was with me there then

[Tr. 758]

and I remember putting labels and putting serial numbers on them because they were new in 1959.

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[Tr. 770]

Q. In other words, the amount owed to you at the end of 1959 as a result of all the transactions between your corporation and Mr. Fields in connection with the Tampa Pocket Phone Paging System was carried over into the 1960 account, was it not? A. If you refer to that by the accounts receivable, the order of transfer and the pocket phone receivers, sir, purchased, yes.

Q. That is not my question, Mr. Pinson.

At the end of 1959 you stated that there was an amount owing from Mr. Fields to the Pinson corporation, and I asked you whether or not that was paid by Mr. Fields. I believe you stated that it was not paid by Mr. Fields, that it was carried over as a charge against his account for the operation of the Tampa station. Isn't that correct? A. The \$230.84 was carried over the the first quarter report of 1960.

Q. So that no actual funds passed between the parties in connection with the operations of the Tampa station for the year 1959?

MR. NEWFIELD: I object to that question.

PRESIDING EXAMINER: The objection is sustained. The witness has fully answered your question, Mr. DeVore. If the account is carried over you can't pass actual funds.

[Tr. 771]

BY MR. DeVORE:

Q. Were there any actual funds passed between the parties during the year 1960? A. In 1960, as I testified, there were \$1350 credited against pocket phones purchased by Mr. Fields. It was due at the end of the first and second quarters after a net return of \$549.91 and after the credits, monies owed Pinson, Inc. for the third and fourth quarter, and the payment of receivers was taken away from that, the deficit owed Pinson, Inc. was \$355.92. On the third and fourth quarters \$355.93 carry-over and the \$6.75 paid. That left Mr. Fields owing Pinson, Inc. \$994.89.

MR. DeVORE: My question, Mr. Examiner, was whether or not any actual funds passed between the parties during 1960.

PRESIDING EXAMINER: Did actually Mr. Fields pay you that deficit at the end of 1960?

THE WITNESS: No, sir. These deficits have been carried over from item to item because of the purchase of these pocket phones and the accounts receivable.

PRESIDING EXAMINER: That was carried over to 1961, the deficit of 1960, the end.

THE WITNESS: Yes, sir. Over \$4200 for the receivers and these accounts receivable. In other words, there was only \$900-some-odd still owing on all that tremendous capital.

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[Tr. 773]

Tampa, Florida

February 28, 1961

* * * * *

[Tr. 774]

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CROSS-EXAMINATION (Resumed)

BY MR. DeVORE:

* * * * *

[Tr. 821]

Q. For a short time between January 1 and April 1 of 1959 you were collecting or had the right to receive a maximum of 50 percent of the \$6 collected on behalf of Mr. Fields? A. That is correct, sir.

Q. And at that time you were also collecting the \$4 charge for the rental of pocket phone receivers? A. That is correct, sir.

Q. So that during April, during the period between January 1 and April 1 of 1959 you were receiving or could receive a maximum of \$3 for the service rendered to Mr. Fields? A. Yes, this is correct.

Q. In April of 1959 the receivers were sold to Mr. Fields, and he then was credited with the full amount of charges collected in Tampa, namely, \$10 for each subscriber; is that correct? A. After April, 1959?

Q. Yes. A. Yes, on this when we changed the bookkeeping procedures according to Mr. Gladstone's instructions and orders.

Q. And at that time you also transferred receivables to Mr. Fields and charged his account with the amount of receivables outstanding at April 1, 1959; is that correct? A. Again Mr. Gladstone's specific instructions and

[Tr. 822]

orders. We carried those instructions and orders out immediately.

* * * * *

[Tr. 828]

Q. When did you start this account? A. In February 1961.

Q. Prior to that time did you ever maintain separate accounts for the funds collected in connection with the rendition of paging station service in Tampa? A. No, sir, nor was it ever suggested to me that I do so.

Q. Were the funds collected from paging service comingled with the funds of the corporation, Charles P. B. Pinson, Inc.? A. They are not separate accounts and cannot be kept in separate accounts, we have only one fund for all functions of the corporation.

Q. Will you answer my question "yes", then? A. They are not so commingled.

Q. Your statement, then --

PRESIDING EXAMINER: I think the witness has responded adequately to the question. He stated there was only one account.

BY MR. DeVORE:

Q. Mr. Pinson, a while ago when I was asking about the amount of money you received during 1958 from the paging service in Tampa you indicated some of the services which Charles P. B. Pinson, Inc. performed in connection with rendering that service. Would you tell us the various things that you did in connection with operating the Tampa one-way signaling station

[Tr. 829]

other than receiving the calls and putting them on the air? A. What type things do you refer to here? Do we arrange the route facilities for them? We furnish telephone correspondence communication to the paging service throughout --

Q. Did you do the billing for paging service rendered in Tampa?

A. We did.

Q. Did you do it on bills of Charles P. B. Pinson, Inc.? A. We did prior to March of 1959, prior to the entrance of Mr. Gladstone, our billing was being done on the billhead of James C. Fields Tampa pocket phone station.

Q. Prior to April of 1959 was there any indication on the bills sent out for paging service rendered in Tampa that Mr. Fields was the licensee or in any way connected with the service rendered in Tampa?

A. On the billheads?

Q. On the bills -- billheads. A. No, sir. Most of the customers were aware of them.

Q. Mr. Pinson, is this the billhead which you utilized during 1958 and prior to April of 1959 in connection with billings for paging service in Tampa? A. I can't certify this is the exact bill. I imagine. We have been using about the same form for a great many years, I think we started in 1957 sometime.

* * * * *

[Tr. 830]

Q. You also performed the necessary accounting and bookkeeping on behalf of Mr. Fields during 1958, 1959, 1960 and

[Tr. 831]

up to the present time, is that correct? A. That is correct, sir.

Q. Did you -- A. By "you" I assume you mean the corporation.

Q. The corporation. Did you undertake during 1958 and prior to April of 1959 to make collections of delinquent accounts? A. Someone in the office did, bearing in mind Mr. Fields received credit on the total amount billed whether that is collected or not. Obviously someone made diligent efforts to collect the accounts.

Q. Did you make clerical personnel available to Mr. Fields for the completion of reports and any other papers executed in connection with the operation of the Tampa paging station? A. He could come in and use our personnel for bookkeeping purposes or typing letters or anything also that was necessary.

Q. Did you do any solicitation or advertising in connection with the Tampa pocket phone paging service? A. Specifically, I don't think that there was any advertising sent out for the pocket phone paging of Tampa, there was a notation went out with some of the advertising that pocket phone paging service was also available.

I might point out we had a great deal of pocket phone

[Tr. 832]

paging literature in St. Petersburg which has never been sent out.

* * * *

THE WITNESS: Sir, on the face it bears the name of the Physicians Exchange and does not bear the name of Charles P. B. Pinson, Inc. on it. It says, We have service available for telephone answering service at Tampa, St. Petersburg and Clearwater, and on the rear it bears the statement, If your office is closed we will answer your phone and relay all messages

[Tr. 833]

as you direct and also supply you with a pocket phone which notifies you when you have a call. The pocket phone is a small radio receiver which weighs only five ounces and is about the size of a package of cigarettes and can easily be carried in your coat pocket. And it also says:

This is merely notification we will have this additional service available and can arrange it for you.

PRESIDING EXAMINER: Is that an advertisement which was sent out in the Tampa area?

THE WITNESS: Yes, sir. Yes, sir. It was mailed at St. Petersburg.

MR. DeVORE: I ask that the card which Mr. Pinson has just referred to be marked for identification as FCC Exhibit No. 10.

PRESIDING EXAMINER: The card will be so marked for identification.

(CARD REFERRED TO WAS MARKED FOR IDENTIFICATION AS FCC EXHIBIT NO. 10.)

PRESIDING EXAMINER: I would like to ask what period of time that advertising was sent out.

THE WITNESS: About 1958, sir, and '59. We could check our Post Office receipts.

PRESIDING EXAMINER: If you recall it was sent out sometime in both years, that is adequate.

THE WITNESS: Yes, sir. This was sent out through both

[Tr. 834]

years.

PRESIDING EXAMINER: Thank you.

MR. DeVORE: I offer in evidence FCC Exhibit No. 10 and ask permission to withdraw it to have copies made.

PRESIDING EXAMINER: Is there any objection?

MR. NEWFIELD: I have no objection, although I could not understand the last part of what counsel said.

PRESIDING EXAMINER: To also have permission to withdraw for additional copies to be made.

MR. DeVORE: We did not have copies available. Could we withdraw in order to make copies?

MR. NEWFIELD: No objection.

PRESIDING EXAMINER: FCC Exhibit 10 is admitted into evidence.
(FCC EXHIBIT No. 10 WAS RECEIVED IN EVIDENCE.)

BY MR. DeVORE:

Q. Mr. Pinson, I show you a document which has the inscription at the top, Physicians Telephone Exchange and ask whether this document is a piece of advertising material which you used in connection with the Tampa pocket phone paging service. A. Yes, I believe it to be a copy of it. It isn't my signature at the bottom -- signed by someone else.

Q. Do you know whether this was used by your corporation for the purpose of advertising?

[Tr. 835]

A. No, it was not used for the purpose of advertising, sir. It was used for the purpose of placing it in there to find out whether these people in the city of Tampa desired such service, and this was sent out, as I remember it -- it was about December 1957 and January of 1958.

MR. DeVORE: I ask that the document to which the witness just referred be marked for identification as F.C.C. Exhibit No. 11.

PRESIDING EXAMINER: The document will be marked as FCC Exhibit No. 11 for identification.

(DOCUMENT REFERRED TO WAS MARKED FOR IDENTIFICATION AS FCC EXHIBIT NO. 11.)

MR. DeVORE: I ask that FCC Exhibit 11 be received in evidence.

PRESIDING EXAMINER: Any objection?

MR. NEWFIELD: No objection.

PRESIDING EXAMINER: FCC Exhibit 11 is received in evidence.

(FCC EXHIBIT NO. 11 WAS RECEIVED IN EVIDENCE.)

BY MR. DeVORE:

Q. Mr. Pinson, is there any provision in the contract of March 13, 1958 which relates to your providing the various services for Mr. Fields? A. What "various services" are you speaking of?

Q. Accounting, billing, advertising, soliciting, et cetera.

[Tr. 838]

PRESIDING EXAMINER: Mr. Pinson, will you just respond

[Tr. 839]

directly to the question. what matters were discussed? Not what he said and you said.

THE WITNESS: Well, how can I phrase what we discussed, then, without saying "this is what the man said to me"?

MR. DeVORE: Mr. Examiner, I have no objection to the witness stating what he remembers Mr. Gladstone told him on these occasions.

PRESIDING EXAMINER: Do you object?

MR. NEWFIELD: No, I withdraw my objection.

PRESIDING EXAMINER: Thank you.

MR. NEWFIELD: The only point I make, though, Mr. Examiner, is this. I believe that under the circumstances of this case where we requested that witnesses be put under the rule and where it is apparent that Mr. Gladstone in order to remain in the room -- he indicated that he was to be a witness and had not planned to participate as attorney and was doing so only reluctantly because of the exclusion motion, that in all fairness the substance of the Commission's what I have termed "accusatory case" should be put on by the Commission and not be brought in by cross-examination of this witness, and I think that is particularly apparent where one of the principal witnesses apparently is going to be Mr. Gladstone. I think Mr. Gladstone should testify as to the matters within his knowledge before you obtain cross-examination in answer to these charges.

PRESIDING EXAMINER: The charges as far as I can determine

[Tr. 840]

from the previous testimony do not involve the particular point of the conferences between Mr. Pinson and Mr. Gladstone.

MR. NEWFIELD: I cannot see how they can be separated, your Honor, and if this witness is going now to launch into detailed discussions concerning these charges then it would seem to me that our whole objective is being thwarted. And I believe the Examiner indicated he took a sympathetic view to that position --

PRESIDING EXAMINER: I don't know what you have reference to. I was talking about the order of procedure in the case.

MR. NEWFIELD: Yes, and the burden of moving forward with the accusatory case.

PRESIDING EXAMINER: I see what you have reference to. Well, I am going to permit the questioning until it does come to such a point that it does get into such matters.

MR. NEWFIELD: May the witness be instructed then at the outset to discuss only those matters which pertain to the issues which have already been discussed thus far in the hearing?

MR. DEVORE: Mr. Examiner, I don't think I should be placed under any such limitation. This witness has constantly referred to things told him by Mr. Gladstone at the time of these conferences --

PRESIDING EXAMINER: That is the principal reason why I have overruled the objection and that is the reason I attempted to limit the testimony to a statement of the matters actually

[Tr. 841]

discussed without getting into hearsay. I am overruling the objection. You of course may renew your objection at any time to any other question that is asked.

Can you respond to the last question?

[Tr. 842]

THE WITNESS: Yes, sir. The first thing that Mr. Gladstone said to Mr. Fields and I -- he was sitting in my office when I entered my own premises, as if he owned the office. He said, "I am going to revoke all of your licenses."

This was supposed to be an investigation. This is one of the first statements that Mr. Gladstone made to us. And he asked to see various things of Mr. Fields, which Mr. Fields offered to produce.

Later in these discussions we asked him repeatedly, time after time, what should we do, how should this be done, do you have any specific recommendations that you have never made up to this time. And he continued to be very evasive and to carry on. And finally he then said, "This is what I want done." And he went and spelled out that there should be a separate set of books, though we pointed out that we maintained a separate set from the viewpoint that all of the entries in our books for Fields were separate and distinct. But he said there should be a separate journal. This was immediately done.

There should be a separate billhead. And we pointed out to him that the young lady was at that very moment billing on the billheads of James C. Fields.

He insisted that the name of James C. Fields should appear all over the premises at 708 Florida Avenue, Tampa,

[Tr. 843]

Florida, though we had contracts with other companies whose names did not appear on the building or on our doors. We contacted a sign painter the next day and issued the order to have this done.

And he insisted that the receivables should be in the name of Fields, and this also -- By the receivables I mean the monies due from the pocket phone service, that we were in essence paying Mr. Fields as though all of these were paid in cash at the time of entry. This also was immediately done.

He insisted that the pocket phone receivers should be in the name of Fields. And one of the last things --

PRESIDING EXAMINER: May I ask for clarification.

When you say in the name of Fields do you mean --

THE WITNESS: In other words, he said we should sell -- Pinson, Inc. should not rent these receivers to Fields' customers, but Mr. Fields should own them. So we conveyed them and sold them to Mr. Fields.

PRESIDING EXAMINER: Thank you.

THE WITNESS: And one of the things I remember most particularly that this gentleman did and said at that time was he went out to my set of corporate books and he pointed out and he says, "Right there is where you are fraudulent, where this is a terribly wrong thing that you are doing."

I don't know if these are the exact words.

And he pointed out that the \$6 paging charge -- not only

[Tr. 844]

my books and Mr. Fields -- was separate from the \$4. He says, "They can't use one without the other, and therefore it should be entered as \$10."

And I pointed out to him that the Commission's rules themselves in the filing of the tariff required the separate keeping of books, that you should have a message charge and equipment charge separate and distinct in your tariff.

I pointed out to him that the Form L reports required this information. Therefore, it must be carried in separate columns if the Form L isn't to be a guessing game.

And there are many, many other matters that are set forth in memoranda to the Commission, and letters to the Commission, this man's actions and statements.

He insisted, the first night that he was there, that we drive him to the city of Tampa to look at Mr. Fields' station. I thought he didn't have a car. So I was very cooperative and conveyed him to the city of Tampa and returned him to the city of St. Petersburg. He got out of my car and got into a government car that he had parked there, and this is approximately 8:00 p.m. or so in the evening, long past the business hours.

This man stated this was an investigation, but the first thing he says to Mr. Fields or me is, "I am going to revoke all of your licenses."

We have maintained to the Commission and to him that we have never received an impartial investigation but a building

[Tr. 845]

up of small, insignificant matters.

PRESIDING EXAMINER: That is not in response to the question.

THE WITNESS: I'm sorry, yes, sir.

PRESIDING EXAMINER: To the best of your recollection, those are the matters that were discussed?

THE WITNESS: Yes. He discussed Mr. Fields' checks. He wanted to see them.

Mr. Examiner, this went forward over a period of a week, and the results, his actions here, both with our personnel and with ourselves, were so bad personally that by Thursday we were tired of this, and I called the Commission, the offices of the Commission, and made appointments for Monday and Tuesday to talk to them, to request a hearing on these matters.

But, to make the record clear here, this went on for a period of three or four days or five days. I don't have the figures in front of me here, but there are many matters which were discussed during this period of time, sir. There was the fact that he entered my offices, from what my personnel tell me, and ransacked our files when no one was present, from our business offices.

MR. DeVORE: Mr. Examiner, if he is going to refer to what people told him, I want to know the names of the people. Otherwise I am going to ask to have it stricken and --

PRESIDING EXAMINER: The statement starting with "from

[Tr. 846]

what people told him, he entered the office and ransacked the files" is stricken on the basis of hearsay.

THE WITNESS: When he first came to my office --

MR. NEWFIELD: Just a minute.

Mr. Examiner, may I point out that this witness is the principal officer, executive officer of the corporation. I submit that he is entitled to make the summary statement he made in that capacity. He is charged with knowing what goes on in his own premises.

PRESIDING EXAMINER: He is relying fully in that instance, though, on hearsay statements which it is impossible to prove the veracity of by cross-examination of the party purportedly having made it, unidentified.

THE WITNESS: Mr. Examiner, I can quote this man specifically.

PRESIDING EXAMINER: I do not want you to quote hearsay testimony.

THE WITNESS: This is not hearsay testimony. What he said to me in conversations. I inquired about this matter, and he said he always finds the best evidence in someone else's files, when I protested this action on his part.

PRESIDING EXAMINER: Have you completed your statement of the matters?

THE WITNESS: Yes, sir.

BY MR. DeVORE:

[Tr. 847]

Q. Are there any other matters which you can remember which were discussed on that occasion? A. I am sure if I sat down for a long period of time, sir, and reviewed memoranda and notes and things, that I can. This is a four- or five-day operation on behalf of Mr. Gladstone here.

Q. Well, Mr. Pinson, do you have memoranda notes on the events which occurred during this period? A. Yes, sir. They are officially filed letters in the Commission files on Mr. Gladstone here, and our opinions and actions on him.

Q. Is that what you refer to when you talk about memoranda and documents in your files? A. Yes. By reviewing that, it would refresh my mind, all the things this gentleman engaged in during that period of time.

Q. You have not refreshed your recollection in connection with this proceeding of these matters? A. It is impossible, sir, to refresh my memory as you put it on the multitude of details you wish me to be conversant with on a moment's notice.

PRESIDING EXAMINER: When you come to a convenient point we will recess for lunch.

BY MR. DeVORE:

Q. Are there any other matters which you corrected as

[Tr. 848]

a result of the conversations which took place during this period of April, 1959? A. I think --

MR. NEWFIELD: I am going to again point out, Mr. Examiner, that we would object to this witness going into particulars of conversations.

PRESIDING EXAMINER: The question, as I understood it, did not call for going into particulars of conversations. He asked him were there any other changes made as a result of these --

MR. NEWFIELD: I thought he said were there any other matters discussed.

PRESIDING EXAMINER: Read the question back, please.

(The record was read by the reporter.)

MR. NEWFIELD: I'm sorry. I didn't hear the question properly.

PRESIDING EXAMINER: Were there any other changes made in your operation as a result of --

THE WITNESS: Mr. Examiner, promptly thereafter and since that time we have written letters to the Commission setting forth all the changes that were made. From memory this is all I remember at the moment, but these things are very involved and they are set forth in all these letters.

PRESIDING EXAMINER: Thank you.

* * * * *

[Tr. 857]

* * * * *
Q. Does Mr. Fields advertise in the telephone directory

[Tr. 858]

of the General Telephone Company in the city of Tampa?

MR. NEWFIELD: We object to that on the ground that it is incompetent, immaterial and irrelevant and not proper cross-examination, not within the scope of any of the issues which have yet been drawn.

PRESIDING EXAMINER: The objection is overruled. The principal purpose of this proceeding is to determine the inter-relationship of the Fields and Pinson operations.

Of course, we have also the comparative aspects of the application of Mr. Rosenson and Mr. Fields. I think this is fully within the scope of the issues.

MR. NEWFIELD: I submit, Mr. Examiner, that the fact that Mr. Pinson's corporation pays a Tampa license and that Mr. Fields does not is not calculated to establish anything within the scope --

PRESIDING EXAMINER: The weight that is to be attributed to the evidence you may argue in your proposed findings of fact and conclusions of law. I do think it is sufficiently relevant and material to permit its introduction.

MR. DeVORE: The witness I do not believe has answered the question yet as to whether or not Mr. Fields is advertised in the telephone directory for the city of Tampa issued by the General Telephone Company.

THE WITNESS: Not to my knowledge.

BY MR. DeVORE:

[Tr. 859]

Q. Mr. Pinson, does your corporation have an ad in the classified section of the telephone directory issued by the General Telephone Company of Florida in Tampa in February, 1961, in the classified section of that directory under Mobile Radio Service? A. We have many ads in many telephone books that are duplicated in every city, sir. If you show me the book I will be glad to examine it. Where is it?

Q. Under Mobile Radio Service. A. Yes, we have such an ad apparently.

MR. DeVORE: Mr. Examiner, I ask you to take official notice of the advertisement contained in the directory which I have identified.

PRESIDING EXAMINER: Is the notice solely to show there is an ad in the directory?

MR. DeVORE: And the text of the --

PRESIDING EXAMINER: Read the text into the record, please.

MR. DeVORE: Under the bold face type MOBILE RADIO SERVICE there is listed Auto-Phone Telephone Answering Service and Mobile Radio Exchange Division of Charles P. B. Pinson, Inc., 708 Florida Avenue, Telephone No. 2-0871.

PRESIDING EXAMINER: Having been read into the record, I will not take notice of the ad.

BY MR. DeVORE:

[Tr. 860]

Q. Mr. Pinson, did the same ad appear in the directory issued for the city -- the telephone directory for the city of Tampa in August of 1960? A. The same statement applies. If you will show me the book I will be glad to verify it, sir.

Yes. Auto-Phone Telephone Answering Service and Mobile Radio Exchange Division, Charles P. B. Pinson, Inc., 708 Florida Avenue, 2-0871.

[Tr. 861]

BY MR. DeVORE:

Q. Mr. Pinson, does the same ad appear in the directory issued for the city of Tampa for February 1959 with the addition of the following statement, "See our ad under Telephone Answering Service"? A. Yes, it appears in that manner.

Q. Does it also appear under the bold-face type, radio communications companies in the February 1961 City of Tampa directory, which states: Auto-phone telephone answering and mobile radio exchange division of Charles P. B. Pinson, Inc. -- A. Where are you reading from, which one?

Q. Florida Avenue, No. 20871. A. Yes, that is the main line number, I believe, 20871.

Q. Did a similar ad appear in the city telephone directory for Tampa issued in August 1960?

MR. NEWFIELD: May I see that before you answer?

(Document was handed counsel.)

THE WITNESS: Yes, sir, but I want to point out that the --

(Witness consults with his counsel.)

BY MR. DeVORE:

Q. Have you answered my question, Mr. Pinson? A. It so appears, the same thing, Auto-phone telephone answering and mobile radio exchange division of Charles P. B. Pinson, Inc., 20871.

Q. Did a similar ad appear in the city telephone direc-

[Tr. 862]

tory for Tampa issued in February 1959? A. Identical wording, the same thing.

Q. Mr. Pinson, did there appear in the city telephone directory for the city of Tampa issued February 1961 under Telephone Answering Service a display ad which indicated the name Auto-phone Exchange, 708 Florida Avenue, which advertised pocket phone paging? A. It specifies that we answer telephones, a separate item for mobile radio -- pocket paging phone, the trade name -- which is independently operated.

MR. NEWFIELD: Mr. Examiner, in order to save time -- and I am not entering objection to these questions, but I would like counsel to make available to us the volumes to which he has referred because we may wish to add additional questions on redirect examination.

MR. DeVORE: We have no objection to making the telephone directories available.

PRESIDING EXAMINER: Thank you.

BY MR. DeVORE:

Q. Does that ad also indicate the number to call is 20871? A. That is correct, sir.

Q. Did a similar ad appear in the volume of the telephone directory for the city of Tampa in August 1960? A. Yes, it appears on page 472.

[Tr. 863]

Q. Let me amend my question. Didn't the exact identical ad appear?
A. I assume they are identical ads.

MR. DeVORE: Mr. Examiner, would you like to see this?

PRESIDING EXAMINER: No, sir. I do not. Thank you.

BY MR. DeVORE:

Q. Mr. Pinson, did there appear in the volume for February 1959 of the city telephone directory for Tampa an ad which indicated the name Auto-phone Exchange, 708 Florida Avenue, and also pocket phone radio paging? A. It says, which is carried in the pocket, weighs 5 ounces and notifies you when you have a call -- February 1959.

Q. Is the number indicated in that ad also 20871? A. The number indicated is 20871.

MR. DeVORE: Mr. Newfield, did you want these volumes of the directories?

MR. NEWFIELD: Just so they are available for the redirect examination.

BY MR. DeVORE:

Q. Is there any telephone listing in the telephone book for Mr. Fields' pocket paging service in Tampa? A. They are listed as pocket phone paging service -- as you have so indicated.

Q. Can you tell me where in any of these volumes there is an indication that Mr. Fields' pocket phone paging service

[Tr. 864]

is listed? A. In the ads which you referred to. There it states right on the face of it.

Q. Will you indicate the ads that you have reference to where Mr. Fields' name appears? A. Pocket phone paging service appears, sir, which I believe is the name filed in the tariff.

Q. Is there any ordinary listing for Mr. Fields in the telephone directory?

PRESIDING EXAMINER: Are you speaking now under the name of Fields?

MR. DeVORE: Yes.

THE WITNESS: I have told you, to the best of my knowledge, there is none.

BY MR. DeVORE:

Q. Is there any telephone listing under the trade name, Tampa Pocket Phone Paging? A. Not to my knowledge.

Q. Now, the ads that you have reference to are the ads that I asked you to identify previously? A. The display ads -- and this kind of thing in the classified telephone advertising, sir.

Q. Mr. Pinson, is this the ad that you have reference to which identifies Mr. Fields' pocket phone paging service in Tampa?

[Tr. 865]

A. Also the display ads that you pointed out, they carry both legends of the mobile radio phone and the other covers pocket phone paging and each time his trade name appears.

* * * * *

[Tr. 897]

MR. NEWFIELD: It does not characterize what was in the answer. Therefore, it does not show that the answer specifically denied any violation.

PRESIDING EXAMINER: Well, I am not going to retry that case before the Federal --

MR. NEWFIELD: I don't propose that we do anything more than put on the record such evidence as may pertain to the litigation which would demonstrate that there has been no finding by any court that such a violation occurred.

PRESIDING EXAMINER: Well, I am sustaining the objection again to your question on the ground of materiality. And, further, as I have just pointed out, FCC Exhibit 6 shows those exact facts with reference to whether an answer was filed and withdrawn.

MR. NEWFIELD: We respectfully make an offer to show that the complaint of a violation was specifically denied, that the defendants, when they entered a waiver withdrawing their answer, waiving their defense, never consented or agreed that there had been any violation, and that, in fact, there is no evidence arising from that litigation which supports a conclusion that either Mr. Pinson individually or Charles P. B. Pinson, Inc. has violated a federal statute relating to wages and hours of employees.

[Tr. 898]

PRESIDING EXAMINER: Are you trying now to cast in the light of nolo contendere --

MR. NEWFIELD: I think since nolo contendere relates only to, I believe, criminal cases -- This is not a criminal action.

PRESIDING EXAMINER: But it is used in anti-trust actions, too, at times which do not involve criminal charges, if I understand correctly.

MR. NEWFIELD: No. I believe the anti-trust does. In fact, you will recall just recently some officials of General Electric were sent to jail.

PRESIDING EXAMINER: Well, it can.

MR. NEWFIELD: They have criminal and civil types.

PRESIDING EXAMINER: Anyway, I am trying to relate your position --

Is your position similar to a plea of nolo contendere in that proceeding?

MR. NEWFIELD: No. It is just a pure factual situation. I think we are trying to show that there has been no admission of a violation on the part of either defendant, and that there is no judgment of a court specifically holding that there has been a violation. It is merely a judgment which forbids future violations without any finding of past violations or current violations.

MR. DeVORE: Mr. Examiner --

[Tr. 899]

PRESIDING EXAMINER: You are arguing the meaning of FCC Exhibit 6 at the present time. Let us proceed. I have sustained the objection to the last question on the grounds of materiality.

BY MR. NEWFIELD:

Q. Mr. Pinson, you will recall questions also with reference to your army career yesterday on cross-examination? A. Yes, sir.

Q. I believe you stated that you were a private? A. That is correct, sir.

Q. I will ask you whether you received an honorable discharge from the services, and, if so, will you please examine this document and put into the correct date. A. Yes, sir. It says "Army of the United States

"Honorable Discharge

"Charles P. B. Pinson".

Dated the 12th of December, 1945, at Lowry Field, Colorado.

Q. I will also show you another document: "Subject: Recommendation of Enlisted Man." I will ask you to examine that document and state in substance what it is, sir. A. It says: "775th Technical School Squadron

"Lowry Field, Denver, Colorado

"Subject: Recommendation of Enlisted Man.

"To: Whom It May Concern.

"1. During my assignment as Commanding Officer

[Tr. 900]

of the 3rd Technical School Squadron, Lowry Field, Denver, Colorado, Private Charles P. B. Pinson, ASN 14136244 was a member of the above mentioned organization for a period of three (3) months. During this time, he carried out his duties with a degree of efficiency that warrants this recommendation.

"2. Private Pinson commands the respect of his associates. He has been faithful, loyal and cooperative."

It is signed by Joseph L. Tasetano, Major, Air Corps, Commanding.

Q. I will ask you whether or not you received a recommendation for Officer Candidate School, and, if so, state the relevant facts. A. This is headed "SQUADRON B, 3705th AAF Base Unit, Lowry Field, Colorado, 7 November 1945.

"Subject: Recommendation for Private Charles P. B. Pinson, ASN-14136244.

"To: Members of Officers Candidate Board.

"1. Private Charles P. B. Pinson has served as a B-29 Flight Engineer Instructor, since March 1945. He has had officers as students nearly the full time and has clearly shown leadership to a high degree. His character is excellent and he appears to be generally a good, clean, and conscientious soldier. His bearing

[Tr. 901]

and appearance is excellent.

"2. In the opinion of the undersigned, this man is excellent officer candidate material."

It is signed by L. Jay Renz, Major, Air Corps, Commanding, who was my commanding officer at that time.

Q. I also show you another document which relates to a recommendation that you attend Officer Candidate School. I will ask you to examine it and state what efficiency rating and character rating you received. A. Yes, sir.

The previous letter I just read, by Major Renz, was attached to this, and it is headed Squadron B, 3705th AAF Base Unit, Lowry Field, Colorado, 7 November 1945. Included is WD AGO Form No. 0850.

Q. Mr. Pinson, I think you can skip that and just give us, if you will, what is the character rating shown thereon. A. It says "To Commanding Officer, Squadron B, 3705th AAF Base Unit, Lowry Field, Colorado.

"1. (Approved).

"2. Character: (Excellent)", which is the highest rating on this line.

"3. Efficiency rating: (Superior)," which is the highest rating on the line shown.

"4. Full statement as to leadership, demonstrated or potential of the applicant. Statement is enclosed.

"5. Applicant has completed individual training pre -

[Tr. 902]

scribed by AAF training standards.

* * * * *

[Tr. 947]

Tampa, Florida

March 1, 1961

* * * * *

[Tr. 953]

JAMES C. FIELDS

resumed the stand and was further examined and testified as follows:

DIRECT EXAMINATION -- RESUMED

BY MR. NEWFIELD:

Q. Mr. Fields, I have just requested the Hearing Examiner to take into consideration certain documents which appear in the official files of the Commission, the first of which was the action of the Commission in October 1955 dismissing the Pinson Company's application for a Tampa license. And then you will recall reference was made to the date upon which you signed the application which was later filed with the Commission,

your own application, that date being October 3, 1956, approximately one year after the withdrawal of the Pinson application.

Now, during this period of time, that is, this interval of one year, approximately, did you give consideration to the filing of such an application for yourself? A. Yes, sir.

Q. Will you state as best you recall the significant steps which you took leading up to the signing on October 3, 1956 of that application?

A. If I may, I would like to go back a little. After Mr. Pinson became engaged to my daughter I checked on him and

[Tr. 954]

found that he was a good businessman and generally likable, with no -- nothing in particular adverse concerning his reputation. And so consequently we became pretty good friends.

One of the things that I admired in Mr. Pinson was his, you might say, determination to carry on his business on his own, entirely. As I remarked previously, he purchased the original auto-phone station against my recommendation --

Q. This is in St. Petersburg? A. That is right.

Q. Did you have any background of experience in one-or two-way signaling yourself prior to that time? A. Yes -- plenty. In fact, at one time I seriously considered going into the two-way signaling business in the District of Columbia with another party who had a considerable amount of trade with doctors and hospitals.

Q. Could you give about the date or time this occurred, Mr. Fields?

A. Yes. This was in, oh, I would say '47, '48. And we were offered an installation with no rent in a hospital -- and several things that would tend to minimize expense. However, after considering, I reached the conclusion that it just wasn't possible for any real return on the investment, considering the large overhead, the number of girls necessary to

maintain a 24-hour service, facilities for the service, equipment, and technical servicemen. The cost was just prohibitive for any

[Tr. 955]

profit on a two-way system as such -- it would be highly problematical. So I backed away from it.

Q. So that when your son-in-law did go into this business in St. Petersburg against your advice you thought it was -- A. I thought, "Maybe I have been missing a bet here." I always knew that if two-way signaling was combined with telephone answering and properly organized it would be a good investment. When Mr. Pinson was undertaking to expand this business of two-way communication, telephone answering service and paging, and when he was advised that license for a paging system in both cities would not be approved without considerable to-do, he withdrew one application for Tampa.

And we discussed this. He had discussed this with me casually without, of course, asking my opinion or anything on it. Later on when I say -- well, I thought, "Maybe there is something to this, and I will have to try again" -- and I asked his opinion on if I invested a few nickels for a paging system in Tampa if he thought it would be a good thing. I asked him at that time whether he had any objection if I would go ahead on this thing. Well, he laughed and said, of course not, and so I thought it over and didn't do anything about it. This was during the first part of 1955, 1956 -- '56, I believe.

Then, later, on, I decided that I would make an application for it, but "I'm still not sold on it 100 per cent." So in

[Tr. 956]

October of 1956 I did make out the application for the license. And as a matter of fact he assisted me in making out all the papers on the license application.

Q. Did you have an office of your own? A. Oh, no. No. I had retired and I think perhaps one of the main mistakes I made in my life was the mistake of trying to get back into a business of some sort.

Q. You did not have secretarial help at the time? A. No. As a matter of fact, all of my correspondence with the Commission has been through the facilities at the St. Petersburg office.

Q. Now, was there anything unusual about your going into Mr. Pinson's offices in St. Petersburg from time to time? A. Well, no, none at all. We frequently met and had lunch together during business hours.

Q. So we have now gotten down to the point where you decided to make an application in your own name for the Tampa signaling station? A. That's right, and at that time I began to make preliminary inquiries as to facilities in Tampa for it -- where and how the thing would operate. And nothing definite was done. I wasn't sold on it particularly until, oh, the latter part of the year when I filled out the -- decided to go ahead. But up to this time I wasn't committed to anything. And so the application was filed sometime in January of 1957.

[Tr. 957]

Q. May I stop you just a moment. I want to draw your attention to this transmittal letter which is dated January 25, Mr. Fields. Will you please look at that letter and tell me whether or not that is your signature.

A. No, it is not. It is simply a letter that "I am enclosing" for filing and completing Form 401, an application for a one-way signaling station in Tampa, Florida. It is signed "James C. Fields" -- and then some hieroglyphics -- it could be almost anything.

Q. Now, was this letter transmitted to the Commission without your knowledge or consent at this time? A. No.

Q. Were you aware that the letter was to be transmitted? A. It was prepared at my instructions.

Q. Now, I also call your attention to your letter affidavit of May 27, 1957 to the Commission in that same file, KIK578 and I will ask you to read that letter, first.

PRESIDING EXAMINER: It has been made part of the record by incorporation, hasn't it?

MR. NEWFIELD: Yes.

BY MR. NEWFIELD:

Q. Read it to yourself, I mean. A. I have read it.

Q. Now, the last paragraph refers to a request for 10 additional days in which to file additional engineering

[Tr. 958]

data. Now, is that your signature on that letter? A. Yes.
* * * *

[Tr. 959]

Q. Were you aware of the contents of this letter when you signed it? A. Yes.

Q. Did you contemplate making any large amount of profits from the operation of this station after you first commenced operations? A. No. As a matter of fact, I didn't expect any return on my investment, for, oh, one or two years really.

PRESIDING EXAMINER: What do you define as return on your investment?

THE WITNESS: That is profit over and above my original expenditure.

PRESIDING EXAMINER: Thank you.

BY MR. NEWFIELD:

Q. Now, Mr. Fields, you were here, I believe, when Mr. Pinson was testifying as to the application of customer money received on that station toward the price of the transmitter and, later on, toward the cost of the receivers which were sold to you. Do you recall that testimony? A. Yes.

Q. And you have also been furnished with periodic settlement sheets which indicate the application of those monies to those purposes; is that correct? A. Yes.

Q. So that I just want to make clear when you talk about

[Tr. 960]

making a profit, of course, withdrawing cash money from the business is one thing, and applying profits received by the business toward the cost of equipment purchased is another thing. But I presume in your previous answer you recognize that the application of these monies which belong to you does involve derivation of profit over and above --

I withdraw that last statement. Let me put it this way --

PRESIDING EXAMINER: May I ask a question.

Did you consider any monies applied to your business indebtedness as a return?

THE WITNESS: No. I consider that still as original investment.

PRESIDING EXAMINER: Thank you.

Does that bring out the point you wish?

MR. NEWFIELD: Yes. Thank you.

THE WITNESS: I might add, however, that I paid income tax on that money as an income since the Internal Revenue is not concerned with what I do with that money.

PRESIDING EXAMINER: I might add that is very advisable.

BY MR. NEWFIELD:

Q. That is to say as far as your income tax returns are concerned, you have reflected as income and paid whatever tax was required so far as you know on all of this money that came in from customers? A. Yes.

* * * * *

[Tr. 963]

Q. And then there is a photocopy of a station log entry and a photocopy of a letter on the letterhead of Robert Dollar

[Tr. 964]

Company relating to the transmitter, a conditional sales contract executed March 3, 1958, a photocopy of a check signed by you on March 3, 1958, and, lastly, a letter addressed to you by Charles P. B. Pinson March 3, 1958. Were you also familiar with these documents at the time? A. Yes.

Q. What was the purpose of the letter affidavit which you signed on March 17 as you recall the circumstances? A. On March 10, approximately during dinner time, I received a telephone call from Western Union. They read this wire from FCC, a copy of which is attached, in which they stated the license was reconsidered and rescinded: Effective immediately, operation of the station is to be terminated.

Upon receipt of that telephoned message I called the St. Petersburg office and was connected to --

Q. Just a minute, Mr. Fields.

The St. Petersburg office. Whose office are you talking about?

A. Charles P. B. Pinson company.

Q. You were in St. Petersburg when you received the telephone call? A. That is right. I then got in touch with the operator at the paging station control point in Tampa by means of the leased line, and told the girl that I had received this wire from FCC, and to discontinue the paging system immediately.

* * * * *

[Tr. 966]

Q. At this point had you personally ever talked to the Commission staff? A. No.

Q. You were not acquainted with any members of the staff at this period? A. This particular branch, no.

Q. Of Common Carrier Division.

Now, did you have in mind any purpose to mislead the Commission at any time as to your purported ownership of the station or your having in good faith made the application for yourself originally? A. I had no intent to deceive the Commission on any point.

Q. Or at any time? A. At any time.

Q. Mr. Fields, I believe you were here in the courtroom yesterday when there was some evidence given while Mr. Pinson was on the stand about the expenses of a trip to Washington which Mr. Pinson testified were paid by him. This was the occasion on which you and he went to Washington. A. Yes.

Q. To see FCC staff members. A. Yes.

Q. In, I believe, April, 1959. Do you recall going to Washington with Mr. Pinson on that occasion?

[Tr. 967]

A. Yes.

* * * *

Q. Now I want to ask you a general question with

[Tr. 968]

reference to the documents which are attached, letter, conditional sales contract, the check and any and all of the other documents, the contracts.

To the best of your knowledge, information and belief, are the facts and figures which are contained on each of these documents true and correct and accurate? A. To the best of my knowledge, they are true and accurate.

Q. Mr. Fields, in executing the conditional sales contract and in executing and issuing the check dated March 3, 1958, did you have any purpose or intent to mislead or to deceive anyone? A. No.

Q. With reference again to the trip which Mr. Pinson made to Washington in March, 1958, with all of these documents which you now have before you, and your letter, as a result of that trip did the Commission grant permission to change the frequency band from 42 to 35 megacycles? A. I am afraid I didn't understand the question. Was the question the trip that Mr. Pinson took or that I took with him?

Q. No. The first trip that he took in March, 1958. You had gone off the air. A. Yes, sir.

* * * * *

[Tr. 974]

* * * * *

CROSS EXAMINATION

BY MR. DeVORE:

Q. Mr. Fields, you stated that you had initiated discussions with your son-in-law sometime prior to the October 3d, 1956 signing date of your application for a one-way signaling station in Tampa. I understand you asked him whether he had any objections to your filing that application. During those discussions and either prior to or up to the date of the signing date did you discuss with him the manner in which you would operate the Tampa one-way signaling station if a license were granted to you? A. It was more of a question as to how would be the best way to operate it -- in his opinion.

Q. What was the nature of the discussion? What did you ask him and what did he tell you as to how the station should be operated? A. I don't remember. It was purely general.

Q. Did you discuss the amount of investment that you would have to make in order to operate a one-way signaling station in Tampa? A. Yes.

Q. And how much of an investment did you conclude you would have to make?

[Tr. 975]

A. For the cost of equipment only, I mentally budgeted about \$2,500.

Q. And what would that \$2,500 be for? A. Transmitter, antenna, installation; the recording unit. Incidentals.

Q. Did you attempt to make some valuation prior to the signing of the application as to the revenues that could be earned from such a business and the expenses that you would incur? A. Yes.

Q. And what conclusion did you reach? A. Well, I concluded, of course, that it had possibilities.

Q. Did you make some determination pro forma of what the expenses would be in operating such a station? A. Yes, sir.

Q. And what did you consider in reaching such a conclusion? A. Up until the time that I found that Mr. Pinson was going into Tampa eventually as two-way and telephone answering service, I had almost -- as a matter of fact, I had definitely made up my mind it wasn't worth the trouble because of operating expenses, as far as I could determine.

Q. Did you make any studies as to potential revenues and expenses prior to the signing date? A. Not as to detail, no. Generally, yes. In other

[Tr. 976]

words, I checked somewhat -- enough, in my opinion.

Q. Was there any discussion with Mr. Pinson, your son-in-law, prior to the signing of the application as to whether he would operate the station for you in Tampa? A. It could have been mentioned, but at that time -- oh, prior to signing the application?

Q. Yes, sir. A. No.

Q. Was there any discussion of the operation of the Tampa station by Mr. Pinson prior to filing of the application in January 1957? A. Would you repeat that?

PRESIDING EXAMINER: Would the reporter read the question, please?

(The pending question was read by the reporter.)

THE WITNESS: I don't remember.

BY MR. DeVORE:

Q. You signed the application on October 3, 1955 and the application was filed or transmitted to the Commission by letter dated January 25, 1957. Can you explain the reason why there was a delay between the time of the signing of the application and the time of filing of the application? A. Well --

MR. NEWFIELD: Just a moment. I object to the question. I think the date is in error. He said the application was signed

[Tr. 977]

in 1955.

MR. DeVORE: I am sorry if I did. It was October 3, 1956.

PRESIDING EXAMINER: You did say 1955.

MR. DeVORE: I am sorry. I will amend my question. Thank you, Mr. Newfield.

PRESIDING EXAMINER: Do you understand the question?

THE WITNESS: No.

PRESIDING EXAMINER: Will you rephrase the question?

BY MR. DeVORE:

Q. Mr. Fields, you are aware that the application was signed on October 3, 1956? A. Yes.

Q. And that the application was transmitted to the Commission for filing under an accompanying letter which bears the date January 25, 1957. Now, can you tell me the reason for the delay between signing of the application and filing of the application? A. As I recall, it was in Mr. Pinson's office in October when that application was made up, but it wasn't -- I mean, it was signed by me then, but it was left lying there, it wasn't -- I had no intention at the time of filing that thing or sending it on, because I had nothing to back up the application at all.

Q. What changed your mind then between October 3, 1956 and January 25, 1957 when the application was sent to the Commission?

[Tr. 978]

A. The fact that I had retired and I had a few nickels; that I thought this would be a good investment, and I went ahead with it. I thought this would give me a little something to do.

Q. Did you have any discussion with your son-in-law concerning the filing of the application between the time of the signing of the application and the time of the filing of the application? A. It is possible. I don't remember.

Q. Mr. Fields, did you prepare the exhibits which are attached to the application which was filed in January of 1957? A. In conjunction with Mr. Pinson, yes.

Q. When were they prepared, prior to the signing of the application? A. Oh, no. You mean the October 3d?

Q. Yes. A. No. No.

Q. Were they prepared in the interim between October 3, 1956 and January 25, 1957? A. I imagine so. Specifically, I don't remember.

Q. What was your participation in the preparation of the exhibits that were attached to the application? A. Well, I don't even recall that, exactly, what it was. I know that my son-in-law assisted in preparing these things; and what the extent of my participation was, I don't recall.

[Tr. 979]

Q. Did you solicit any potential customers for paging service in Tampa? A. At that time? No.

Q. Did you prepare a tentative tariff for service in Tampa? A. At that time?

Q. Yes. A. No.

Q. When you say "at that time" what time are you referring to?

A. I am referring to the time of the application.

Q. That is the time between the signing of the application --

A. In January 1957.

Q. -- and the filing of the application.

Did you discuss with Mr. Pinson the preparation of engineering data which was submitted in support of the application? A. Yes.

Q. Do you remember the discussions that you had with him concerning the engineering data? A. No.

Q. Did you obtain any of the information which was included in the exhibit concerning engineering data or was all of that information supplied to you by Mr. Pinson?

[Tr. 980]

A. I really don't recall. I don't remember.

Q. Mr. Fields, I show you Exhibit E attached to the application submitted in January of 1957 for the one-way signaling station, and ask you whether this refreshes your recollection as to who prepared the information contained in that exhibit. A. Oh, yes, Charles prepared that. You must understand that I am essentially a lazy man, and Charles, being competent, it is much easier to ask him to fix it up than it is for me to do it.

Q. Let me show you Exhibit C attached to that same application and ask you whether you prepared that or whether Mr. Pinson prepared that exhibit. It relates to the charges and description of service to be included in a tariff. A. Yes, I remember this tariff deal because I was under the impression that this was done at a later date.

Q. Well, does this refresh your recollection? A. Yes.

Q. And what can you tell us now about the preparation of that exhibit? A. The only thing I can tell you is that I discussed it with Mr. Pinson and that we arrived at this summation of the whole thing to go

along with the exhibits. But, as I say, I was under the impression that this was done at a later date.

Q. Did you discuss with him the amount of charges to be

[Tr. 981]

made for paging service in Tampa? A. Yes.

Q. And how did you arrive at the charges that you included in this exhibit? A. Well, those things -- It is my recollection that there is a definite rate governed by the Commission. At least I was under that impression. It is a matter of return on the investment and how much we can charge without pricing ourselves out of the market or running afoul of anything else.

Q. Did you make any studies in order to determine then the rates that you desired to charge in Tampa? A. Yes. I was going to say we estimated the number of customers we can start off with where we will reach a break-even point. In other words, as you -- The more customers you get, you reach a point where you are breaking even, and then above that number of customers you are making a profit.

Q. Did you prepare the tariff which was eventually filed with the Commission effective May 16, 1958 covering the paging service in Tampa? A. With advice from Charles, yes.

Q. Did you discuss changing the charges which you had initially indicated in Exhibit C and filing different ones in your tariff of May 16, 1958? A. I can only say that I don't remember these dates. The changes of rates or charges for service had been dis-

[Tr. 982]

cussed with Charles in each case, yes.

Q. In other words, if there are differences in the rates which were eventually filed in your tariff and the rates which you indicated in Exhibit C, at this time you do not remember why there were any changes made? A. No.

Q. At the time this Exhibit C was prepared and you say you made some studies to determine the number of customers that you could anticipate putting on the system, did you also determine the expenses that would incur from operating the Tampa paging station? A. Yes.

Q. At that time did you contemplate using a contract employee to operate the station other than Mr. Pinson? This is in January, 1957.

A. Oh, at that time --

January of 1957. I don't think so.

Q. Mr. Fields, I think you don't understand my question.

Exhibit C was prepared and filed with the application in January, 1957? A. January 20, 1957, yes.

Q. You show in that exhibit proposed charges for service in Tampa. In order to arrive at those charges, I asked you earlier whether you had made some studies of the expenses and revenues that would result from the operation of a paging

[Tr. 983]

station in Tampa, and I believe that you did state that you made such studies. A. Any study at that stage of the game was purely exploratory.

Q. In order to arrive at any charges for service, wouldn't you have had to make a decision as to the manner of operating the service, because if you pick one method it might cost you one amount; if you picked another method it might cost you another amount, and it would cause you to have a different return. A. That is right.

Q. So I am asking you again whether you had considered a particular manner of operation in January of 1957, and, if so, what manner of operation. A. I considered either going into this thing in connection with an existing system then in Tampa, also whether I could by any means afford to go into this business strictly on my own. I mean by that to provide space and equipment and everything and put it in and run it directly and completely as an independent thing. And that I threw out the

window very quickly. In other words, for me to go into this business I have got to make some arrangement with an existing telephone answering or two-way mobile unit and made an equitable deal with them or I might as well forget it.

Q. Did you have in mind at the time these charges were

[Tr. 984]

prepared how much it would cost you to operate through a contract employee? A. Yes.

Q. And can you tell us at this time how much you anticipated it would cost you to operate the paging service under that arrangement?

A. The decision that I finally reached was one that I eventually entered into with Charles, that any income should be similar on a contingent basis. In other words, if we make any money he gets part of it, and I get the other part.

Q. And is this your understanding of how a contract employee would operate a business for you if it was someone other than your son-in-law? A. A contract employee must, of course, have a definite payment, any employee, and if I provided the transmitter, the receivers, the whole works in connection with an existing system, then the fee to the subcontractor would necessarily be based on quantity of units in service.

Q. And had you made some estimate of what you would have to pay a contract employee? A. Vaguely.

Q. What was that estimate based on? Had you contacted any people who could operate the service for you? A. I had made no definite contact with existing systems in Tampa at that time knowing that --

[Tr. 985]

Q. I'm sorry. Were you going to say something? A. No.

Q. What knowledge then did you have in January of 1957 of how much it would cost you to operate the Tampa paging station if you had not made any contacts with people who could operate the service for you? A. Well, I had, of course, discussed it with Mr. Pinson, and he was thoroughly familiar with his own operating costs.

Q. In January of 1957 when you considered the manner of operating the paging station did you expect that a contract employee would provide you with such services as solicitation of accounts, bookkeeping, billing, advertising? A. No.

Q. In January of 1957 or prior thereto did you have any discussions with Mr. Pinson about his acquisition of a two-way mobile radio system in Tampa or acquisition of a telephone answering service in Tampa? A. It is possible. I don't recall.

Q. Mr. Fields, if Mr. Pinson had been considering the acquisition of a two-way mobile radio system prior to January or during January of 1957 when you actually filed your application for a one-way system, is it reasonable to believe that he would have discussed this matter with you and the manner of operating that two-way mobile system? A. In all --

* * * *

[Tr. 990]

MR. NEWFIELD: Well, also on this basis, Your Honor: trying to keep in mind what I believe is understood, that when it comes down to the details of charges made against Mr. Fields or Mr. Pinson or the Pinson company, the burden of going forward and the burden of proof will be on the Com-

[Tr. 991]

mission.

I don't think, in other words, that they should be permitted to shift that burden to the respondent through cross-examination. In other words, it seems to me clear that the affirmative case relating to violations or

specifics of fraud or deception or misleading should remain on the Commission, and I don't think they should be permitted to bring it in through the back door by cross-examination.

MR. DeVORE: Mr. Examiner --

PRESIDING EXAMINER: The question has just been asked. I cannot see any validity to the objection you have just stated, and I am denying, overruling the objection.

Will the reporter read the question back, please.

(The record was read by the reporter.)

PRESIDING EXAMINER: You understand the question is what did you do in connection with securing this engineering information.

THE WITNESS: I first discussed it with Mr. Pinson, and through him, was put in touch with the Foss firm in the District of Columbia. I authorized Mr. Deeters to go ahead and submit it.

BY MR. DeVORE:

Q. What do you mean you authorized Mr. Deeters to submit it? Did you send him a letter requesting the preparation of the information?

[Tr. 992]

A. I would like to make a statement here, that this matter has given me considerable concern. My memory is faulty, and I have searched diligently to find out when and how Mr. Deeters was paid, and I am quite confident that I paid Mr. Deeters, but how much and when and how I don't know. I think it was somewhere around \$75 or \$100. I also am at a loss since I cannot find any correspondence, and I think most of it was handled by telephone.

I hope I have made myself clear on that particular point.

Q. Yes, I understand you, Mr. Fields. You obviously heard the questions that I had asked Mr. Pinson yesterday concerning the check for \$170.60 paid to the William Foss company in August of 1957.

Mr. Fields, would you have paid for the engineering services rendered you by check? A. As I said before, I have been unable to find any check, cancelled check, nor does my bank statement show it. Nevertheless, I am quite certain that it was paid. The reason I am is because customarily I pay bills immediately. I have operated on a cash basis for a long time, and, with the exception of this paging system, I very rarely purchase anything without paying cash for it.

I might add that the only reason that was handled on a time-payment basis was because it was in conjunction with Mr. Pinson's purchase.

[Tr. 993]

MR. DEVORE: The problem is this, Mr. Examiner: we, of

[Tr. 994]

course, will have to put a direct case on here in Tampa, and while we could produce Mr. Deeters in Florida, it seems an unnecessary burden and expense to produce him as part of our direct case when he will be submitted by the applicants in the proceeding, and I don't want to be foreclosed from presenting some evidence in connection with this matter because I failed to do it here in Tampa.

PRESIDING EXAMINER: Oh, no, you would not be foreclosed in that respect, Mr. DeVore, simply because he did not appear in Florida rather than a further hearing that is now going to be required in Washington, D. C.

BY MR. DeVORE:

Q. Mr. Fields, in response to the Commission's letter of April 30, 1957, you submitted a letter dated May 27, 1957, and I show you that letter and ask you whether you remember it. A. Yes.

Q. In paragraph 4 you say, in response to a question concerning Section 21.15(j) of the Commission's rules, "I intend to manage the station myself and actively participate in the operation of the station."

What did you mean by that statement when you made it? A. At that time --

Q. At that time. A. At that time I meant exactly what it says.

* * * * *

[Tr. 997]

Q. Mr. Fields, I ask you to look at that application and exhibits, and ask you whether you prepared the application and the exhibits attached to the application.

MR. NEWFIELD: We object to the question on the ground that it is not proper examination.

PRESIDING EXAMINER: The objection is overruled.

THE WITNESS: This modification application was prepared in the same manner that the original was.

BY MR. DeVORE:

Q. By that do you mean that it was prepared by Mr. Pinson? A. No, I didn't.

* * * * *

[Tr. 1000]

Q. What agreement did you make with Mr. Pinson? A. It was generally covered in that original contract but before that agreement nothing was finalized.

Q. Well, once having decided to go ahead with the one-way paging station in Tampa did you reach some agreement with Mr. Pinson that he would do all of the things necessary to get the station into operation? A. Well, there wasn't particularly any agreement. We discussed it, and I think it was the middle of '57, I would say. I don't recall just when it was but it was the middle of 1957 when I definitely decided to go ahead with it.

Q. Did Mr. Pinson as a result of that discussion undertake to construct the station and put it into operation for you? A. No. Not until -- the equipment wasn't even received until 1958, in January of 1958 or February of 1958.

Q. Mr. Fields, can you tell me what you personally did in connection with putting the station into operation in Tampa? A. Oh, very little.

Q. In other words, did Mr. Pinson do all of the necessary work other than the signing of the application for modification of the construction permit in order to get the station into operation in Tampa? A. Well, the way you express that, I must say that there are several things that Mr. Pinson did not do. There was

[Tr. 1001]

very little that I did, either, because when the equipment came in -- the transmitter is what I am speaking of now, by "equipment" -- it was sent to St. Petersburg and I refused to accept it there and said to send it back to Tampa, which was done. And I asked Charles to arrange with Bailey to make the installation and I think Mr. Bailey actually had his brother-in-law make the installation.

Q. Mr. Fields, when you say you refused to accept the transmitter in St. Petersburg, you mean that you refused to accept delivery from Mr. Pinson or the Robert Dollar Company? A. Robert Dollar.

Q. Was the transmitter consigned to you, Mr. Fields, or was it consigned to Mr. Pinson's corporation? A. I believe it was consigned to Mr. Pinson's company.

Q. Then I don't understand how you were able to refuse delivery of the transmitter in St. Petersburg. A. Well, Mr. Pinson called me up and says, "Your transmitter is here." And I said, "What is it doing there? Get it to Tampa. Refuse delivery."

Q. The delivery of the transmitter from St. Petersburg to Tampa was undertaken by Mr. Pinson, was it not? A. Yes. I paid for it, however.

Q. Was the first time that you ever paid Mr. Pinson any money in connection with the Tampa station the check for \$741.77 bearing the

date of March 3, 1958?

[Tr. 1002]

A. That is right.

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[Tr. 1019]

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MR. NEWFIELD: Mr. Examiner, we do see that this is a check, in fact was signed, was issued by the Pinson company.

[Tr. 1020]

We make no challenge as to its authenticity.

PRESIDING EXAMINER: That I understood. Thank you.

MR. DeVORE: Mr. Examiner, you inquired at an earlier stage in this proceeding as to whom I meant when I referred to Mr. Pinson, and I want to further assert at this time that I still mean and have throughout the entire proceeding, in referring to both Mr. Pinson and his corporate form as well as his personal being when I have referred to Mr. Pinson. I don't think that there is any question of the separation between the two when we are talking about a man who owns the entire stock in a corporation.

PRESIDING EXAMINER: As I understand the record on it now, your questioning all went to the business entity that is involved in this proceeding.

MR. DeVORE: Yes.

CROSS-EXAMINATION (Resumed)

BY MR. DeVORE:

Q. Mr. Fields, I believe I was questioning you concerning --
Strike that.

Mr. Fields, can you tell me what you did in connection with soliciting customers for the pocket paging service which went into operation in March of 1958? A. Very little.

Q. You say very little. Can you tell me what you did?

[Tr. 1021]

A. Actual selling of paging contracts?

Q. Yes. A. None.

Q. Did you attempt to get any business for the paging service?

A. One or two of my friends who are still in business.

Q. When did you make these solicitations? A. Oh, I don't recall, but it was sometime in 1957.

Now, Mr. DeVore, before lunch I was attempting to clear up your questions on various contracts between Mr. Pinson and myself which was at that time fairly vague in my memory. However, during the lunch hour I have reviewed all of the contracts and I would like to make a statement to clarify the whole deal.

Q. Yes, that is all right. A. Back in November, November 11, 1958, the original contract was signed. I mean November 4. This called for 50 percent of the gross. However, this contract was never in force inasmuch as it was revised prior to the time that any business was done at all, and the one that was actually in effect was the contract of 3-12-58, March 12, 1958, which called for 30 percent of the gross on the \$6 message charge, Mr. Pinson receiving the \$4 receiver charge. This gave him an income of \$5.80 per customer, less maintenance and batteries, et cetera. At the end of the year we settled on 70 percent

[Tr. 1022]

of the gross billings for me, and Mr. Pinson at that time pointed out that he couldn't go along with that agreement. So we changed it to a contract of 50 percent of the gross billings on message charges, Pinson still maintaining the receivers.

Now under that contract I myself did receive \$500-some for repayment, cash, of profits. Then on March 1, 1959 the --

Not March. That is April 1st.

The receivers were sold to me, and the 50 percent of the gross to Mr. Pinson then became a net to him of \$5 per customer instead of the \$5.80. However, he was relieved of the maintenance and cost of batteries. That is the one on April 1 of 1959. Is that right?

No, on the 3rd day of January, 1959, another contract was signed, and that I would like to read:

"Amendment to the contract dated March 13, 1958.

"It is agreed this 3rd day of January, 1959, that Item 4, Compensation to Employee, as shown in the above described contract, shall be changed from 30 percent of the gross receipts to 50 percent of the gross charges from the operation of the one-way signaling station, KIK-578 located in Tampa, Florida.

"Item 3-A of Duties, Responsibilities and Undertakings shall be changed to read:

[Tr. 1030]

* BY MR. DeVORE: *

Q. Mr. Fields, during the period when the station was first in operation what participation did you take in the operations of the station?
A. After the station was placed on the air the first part of March there was immediately evidence of TV interference which Mr. Pinson and myself and my people really attempted to see

[Tr. 1031]

what could be done about it to correct it and we were not very successful. The interference culminated in the wire previously referred to taking the station off the air, caused by official complaints, due to the staff in Washington, at least that is my understanding.

Q. Was there anything in the telegram that indicated that the basis for the rescission of a license was complaints concerning interference with TV, is that what you mean? A. No, but I knew -- I will have to look at that wire again, I guess.

(Consulting document) Pursuant to Rule -- Section 1.16. I did not bother to look that rule up. When the man says, "Take it off," that's it, I don't care what their reason was.

Q. What did you do in connection with the operations of the station once it had been put on the air? A. The second time? After we changed frequencies?

Q. Yes. A. After we changed frequencies and due to -- strike that, please, let me go back. After Mr. Gladstone and his assistants -- no, I am wrong.

After the station went back on the air I was pretty sick of the whole thing and I didn't do anything about it. I was sorry I went into it and since I had a contract with Mr. Pinson to operate the thing I was perfectly content to let him go ahead and operate it.

[Tr. 1032]

Q. How long did this condition last? A. Until Mr. Gladstone and his assistants came to St. Petersburg and that was sometime in the middle of -- well, that is a matter of record.

Q. Mr. Fields, you referred to the time when Mr. Gladstone and another employee of the Commission came to St. Petersburg and Tampa to make an investigation of the operations of the one-way paging service in Tampa. Were you present at any of these conferences? A. Yes.

Q. Do you remember on how many occasions you were present?
A. Only two, I believe.

Q. Can you relate to us what occurred on both of those occasions?

MR. NEWFIELD: I object on the ground it is incompetent, immaterial, irrelevant, not within the scope of the direct examination and anticipates the detailed showing which I understand the staff is going to make and calls upon the witness to furnish them with information which should properly go into the record as part of the Commission case.

PRESIDING EXAMINER: Mr. DeVore, are you not getting into the area that is excluded by the Commission's rule?

MR. DeVORE: No, I am not.

[Tr. 1042]

BY MR. DE VORE:

Q. As a result of the conferences which you had with Mr. Gladstone and another employee of the Federal Commu-

[Tr. 1043]

ations Commission, were there certain changes instituted in the manner of operating the Tampa paging station? A. The manner of operating? There were several changes made, including my own actions.

Frankly, I was considerably upset due to Mr. Gladstone's accusation that I hadn't paid sufficient attention to operation of the system, and, therefore, for the next several months I made two, three, four trips to Tampa to check on the actual operation of the thing until it reached a point where I just made up my mind that this is silly, it is causing me a great deal of inconvenience and I have a contract for Mr. Pinson to do this work, and, instead of me trying to establish an operation by myself in addition to the contractual obligation, I am going to let it go, I am going to stand on that contract. And, so, I took an extended motor trip, was gone for quite a while, and since that time very rarely have I come to Tampa.

Q. Can you tell us then what supervision over the station you exercise at the present time or what direction you may give to Mr. Pinson concerning the operation of the Tampa station? A. I still maintain control over the paging station inasmuch as ever since the original installation there has been a notice on the board over there to the effect that I am the owner and completely responsible for the paging system

[Tr. 1044]

entirely, and any discrepancies that are committed by the station are my responsibility and I, in turn, hold Mr. Pinson responsible to see that there are no discrepancies. Up to now there haven't been.

Q. Have you ever had an audit of the books made which are maintained in connection with the operation of the Tampa station? A. No. My faith and trust in my son-in-law is implicit.

Q. Have you ever in any way reviewed the books and records which are kept in behalf of the Tampa paging station? A. Oh, yes. I had seen and noted the statements presented by Mr. Pinson.

Q. In other words, Mr. Pinson has supplied you with semi-annual statements relative to the operation of the Tampa paging station for the years 1959 and 1960? A. Oh, yes. And it is a running account which is available to me at any time that I care to go down and look at it.

Q. Do you maintain any books and accounts relative to the operation of the paging station other than those which are maintained by Mr. Pinson? A. No.

Q. Mr. Fields, have you ever conducted any advertising for paging service in your own name? A. No.

[Tr. 1045]

Q. Do you operate any business under an assumed or fictitious name? A. No.

Q. Do you do any business in a name --

Let me strike that.

PRESIDING EXAMINER: Mr. Fields, do you have any other business besides the paging service?

THE WITNESS: As a business?

PRESIDING EXAMINER: Yes.

I am not talking about investment properties or stocks or bonds.

MR. DeVORE: Mr. Examiner, I am not concerned really with any business other than paging service.

PRESIDING EXAMINER: I see. Your question didn't make that clear.

MR. DeVORE: I didn't mean to ask the witness about any other business.

BY MR. DeVORE:

Q. Do you operate the paging station under an assumed name or doing business -- A. I do not operate any other paging station anywhere than Tampa station.

Q. I mean the Tampa station. Under what name is it operated?

A. Oh, James C. Fields Paging. It is as shown on the

[Tr. 1046]

photographs -- Pocket Paging. Also shown on the billhead.

Q. Have you ever registered with the Clerk of the Circuit Court in Hillsborough County a statement indicating or certifying that you were doing business in any name other than James C. Fields in --

MR. NEWFIELD: I object to that question. It is incompetent, immaterial, irrelevant.

BY MR. DeVORE:

Q. With reference to the Tampa Pocket Paging station?

PRESIDING EXAMINER: I do not see any relevancy to your question. Do you wish to answer the objection?

MR. DeVORE: Yes. I believe there has been testimony in the record that the paging station has been operating under the name of Tampa Pocket Phone Paging or Pocket Phone Paging Service, and this, as I understand the testimony, is a style of doing business by Mr. James C. Fields, and I am trying to elicit from the witness whether he has ever registered the name Tampa Pocket Phone Paging Service or any other name for the paging station in Tampa.

PRESIDING EXAMINER: That still doesn't establish relevancy. You asked if he had registered under an assumed trade name. What is the relevancy of that matter to this proceeding?

MR. DeVORE: Mr. Examiner, the tariff which has been filed with the Commission, for one thing, as an example,

[Tr. 1047]

bears the designation "James C. Fields, doing business as Tampa Pocket Phone Paging", and we are trying to determine whether Mr. Fields has held himself out in any way as doing business as Tampa Pocket Phone Paging.

PRESIDING EXAMINER: The record clearly shows the name, the date, the time the name James C. Fields was added to the witness' premises.

I am sustaining the objection to the question on the grounds of both irrelevancy and immateriality.

MR. DeVORE: Mr. Examiner, I would like to make an offer of proof at this time. If permitted to proceed, we would show that the witness James C. Fields has not at any time since 1957 to the present time filed with the Clerk of the Circuit Court of Hillsborough County a statement that registers any trade names including Tampa Pocket Paging, Pocket Paging, Tampa Pocket Phone and Pocket Phone.

MR. NEWFIELD: We will stipulate, Your Honor, that Mr. James C. Fields has not registered such a name and --

PRESIDING EXAMINER: In other words, are you withdrawing your objection to the question?

MR. NEWFIELD: No, sir. I am going beyond this because of the question of counsel, anticipating some of the questions, that Mr. Fields has not registered with any appropriate registration official in any of the 50 states of the United States or any country located in the Western Hemisphere such

[Tr. 1048]

a name.

PRESIDING EXAMINER: Mr. DeVore, do you object to the stipulation?

MR. DeVORE: Mr. Examiner, I find the suggested stipulation a little frivolous. We are not seeking to attempt to establish anything that Mr. Newfield is suggesting. We are only concerned with the operations in the state of Florida. We haven't maintained that this man has done any business anywhere else.

PRESIDING EXAMINER: I think the stipulation would be just as irrelevant and immaterial as the question that was asked, and I will not accept it.

MR. DeVORE: Mr. Examiner, I would also like to include in my offer of proof evidence of the existence of a statute on the statute books of the State of Florida requiring --

Let me restate that.

I would like to make our offer of proof to include Chapter 865.09 of the Florida Statute, bearing the title "Fictitious Names Statute", Page 3184 of the 1959 Florida Statute, Volume 2.

BY MR. DeVORE:

Q. Mr. Fields, do you have any city license from the City of Tampa covering your paging station? A. No.

Q. Do you have any state and county occupational license

[Tr. 1049]

covering the paging station in Tampa? A. No.

Q. Have you paid any personal tangible tax on any of the property used in the operation of the paging station in the city of Tampa?

MR. NEWFIELD: We object to this on the ground it is cumulative.

PRESIDING EXAMINER: I would like to have Mr. Fields verify the testimony of Mr. Pinson because he is the one who would have more direct personal knowledge in this matter.

Would you answer the question, please.

THE WITNESS: The question was have I paid any tangible tax in Hillsborough County?

BY MR. DeVORE:

Q. Yes. A. No.

Q. Tangible personal property tax.

Mr. Fields, in response to some questions of the Examiner, I believe you indicated that you first paid income tax on income received from the operations of the paging station based on the returns made for the year 1959. Is that correct? A. I believe that is correct.

* * * * *

[Tr. 1052]

Q. As I understand your testimony, you did not reflect in your 1958 income tax return any of the revenues or expenses of the 1958 operation of the Tampa paging station. A. Would you read that?

(The pending question was read by the reporter.)

THE WITNESS: That is right.

BY MR. DeVORE:

Q. And you did not show in the 1958 return any investment in the facilities, in the Tampa station, or any depreciation on those facilities?

A. No.

Q. Can you tell me when your 1959 income tax return was filed?

A. The first part of April.

Q. April, 1960? A. Yes.

Q. Mr. Fields, are you familiar with the annual reports filed for Station KIK-578 for the years 1958 and 1959? A. Yes.

Q. I ask you to look at the Form L annual reports for those two years, and ask you whether you can give me a breakdown of the Item 16, Investment in Plant, during the year

[Tr. 1053]

1958. A. I cannot. In the first place, this report to me is based on pretty much of an intelligent guess as to what the investment was, the same as Items 19, 20, 21 and 23. I tried to be accurate on Item 16, and no doubt at the time that that was computed I had very good reason for it. At the moment I don't.

Q. Can you give me a breakdown of Item 16 in the annual report for the year 1959 which is shown in that report as \$4500? A. Well, actually these figures again were computed on the basis of money actually invested in equipment, transmitters, and in the \$4500 -- I don't remember the date these things were actually filed; March 30, 1960. That \$4500 is again an educated guess on how much actual cash had been invested in equipment.

Q. Mr. Fields, can you tell me how these annual reports were prepared? A. In Mr. Pinson's office, yes.

Q. Were they prepared under your supervision? A. Well, Mr. Pinson and I collaborated in arriving at the various figures on the thing, and the figures -- the papers were given to one of the girls to type up.

Q. Were all of the figures included in those reports based upon

information supplied to you by Mr. Pinson?

[Tr. 1054]

A. Oh, yes. That is if you are speaking now of the investment in the paging system.

Q. I meant my question to include all of the figures relative to the operation of the paging station, not only investment but operating expenses. A. Yes, it is.

Q. And revenues. A. That is right.

Q. Mr. Fields, in your 1959 income tax return you show an expense item in the amount of \$174.30 as operating supplies. Can you explain what that item is? This item I am asking you about, of course, is in reference to the Tampa pocket phone paging station.

MR. NEWFIELD: I am not sure I heard the preceding question, Your Honor.

Are you talking about the annual income tax return for 1959?

PRESIDING EXAMINER: It shows an item for supplies in the amount of \$170-some, and he asked what the supplies included.

Can you now answer the question, Mr. Fields?

THE WITNESS: If there is nothing to support it here, I don't recall what it was.

PRESIDING EXAMINER: Would your tax return simply list it as supplies?

[Tr. 1055]

THE WITNESS: Yes.

Mr. Brown, who prepares this thing for me, unquestionably has something to show, this \$174.30, but at the moment I have no idea what it was.

BY MR. DeVORE:

Q. Mr. Fields, there is an identical figure shown in the 1959 annual report for Station KIK-578 under Item 37 as Other Expenses Assignable.

A. Undoubtedly that is where Mr. Brown got the figure from, but I don't remember it.

Q. And you would not have any other knowledge as to the item which was included in the annual report in that amount of \$174.30? A. No.

Q. Mr. Fields, Mr. Pinson in his testimony referred to a bank account which had been set up in the Union Trust Company, and referred to this as a joint bank account, I believe --

I have been advised that he referred to this account as an escrow account.

Can you tell me whether you are able to draw checks on the balance contained in that account? A. I am not.

Q. Mr. Fields, can you tell me who paid for the signs which were painted on the offices at 708 Florida Avenue bear-

[Tr. 1056]

ing your name "James C. Fields"? A. Did you say who paid for them?

Q. Yes. A. Eventually part of it was paid by me, but Mr. Pinson made the payment direct to the sign painter. He is the one that contracted for it.

Q. How did you make payment for the painting of the signs? A. I gave him cash for it. It wasn't a great deal. That could have been part of this \$174.30. I don't know.

Q. Mr. Fields, do you have any phone listing in the city of Tampa for the paging service? A. No.

MR. DeVORE: I have no further questions.

PRESIDING EXAMINER: Mr. Rosenson?

MR. ROSENSON: I have a few questions.

BY MR. ROSENSON

Q. Mr. Fields, during the almost three years that Station KIK-578 has been operating would you have any idea how many subscribers had discontinued service? A. No.

Q. Do you know if any subscribers have discontinued service?
A. I understand they have.

* * * * *

[Tr. 1061]

REDIRECT EXAMINATION

BY MR. NEWFIELD:

* * * * *

[Tr. 1077]

Q. Did you enter into a scheme or did you connive with Mr. Pinson on or about March 12, 1958, or did you agree with him on that date that you would go back to March 3 and concoct this entire scheme including the predating or the dating of the conditional sales contract on March 3, the issuance of the check on March 3, the receipt of the letter from him dated March 3 covering the accounting of the transmitter? A. No.

MR. DeVORE: May we have the reporter read that question back?

(The record was read by the reporter.)

BY MR. NEWFIELD:

Q. Mr. Fields, you have made periodic visits, I believe, to the station in Tampa from the time it first went

[Tr. 1078]

on the air. I say periodic. I mean you have made a number of visits to the office. Is that correct? A. Yes.

Q. And you are generally familiar with the installation? A. Yes.

Q. And you referred to the posting of the sign indicating that you were the sole owner. Do you have any information as to compliance with the technical rules of the FCC as regards technical logs for the station? Have you ever seen the engineering log for your station? A. Yes, I have seen it.

Q. And have you also seen to it that other parts -- that other requirements of the rules were rigidly adhered to, at least within your knowledge and to the extent that you visited the office from time to time as to the maintenance of proper entries in the log? A. Yes.

Q. And the keeping on hand of copies of the tariff and copies of the Act, of the Communications Act? A. If you are referring to Part 21, I am not sure whether there is one in Tampa or not. There may be. I don't know. I have never had occasion to refer to it in Tampa.

Q. In the Tampa office? A. That is right.

[Tr. 1079]

Q. In general, have you issued instructions to Mr. Pinson and to any employees who act as operators or who have any connection with the maintenance or operation of your station that there is to be --

MR. DeVORE: Objection. I am going to object to this question. It is leading the witness. If he can ask the witness what instructions were given, let the witness answer.

PRESIDING EXAMINER: I will sustain the objection.

BY MR. NEWFIELD:

Q. What general instructions have you given, Mr. Fields, with reference to adherence to Commission rules and regulations and the Act?

A. Written instructions or oral?

Q. Written or verbal, oral. A. Oral instructions to Mr. Pinson, something to the effect "Don't you let any of those people get out of line."

Q. Meaning the employees or the people that carry on the operation of the station? A. That is right. Adding that what he does -- Well, I am responsible for it.

[Tr. 1080]

MR. NEWFIELD: Mr. Examiner, if you will bear with us while we find copies of documents we might want to introduce into evidence at this stage.

PRESIDING EXAMINER: We will go off the record for a moment to permit Mr. Newfield to check for the proposed exhibits.

(Discussion off the record.)

PRESIDING EXAMINER: We will return to the record. Mr. Newfield, have the exhibits you were seeking for been located?

MR. NEWFIELD: Yes, sir.

BY MR. NEWFIELD:

Q. Mr. Fields, I hand you a sign and I will ask you to read the language thereon, on this piece of paper. **A.** This --

PRESIDING EXAMINER: Has Commission counsel seen the document?

MR. NEWFIELD: Yes.

MR. NEWFIELD: Yes, they have a copy.

BY MR. NEWFIELD:

Q. Would you read the legend which appears on that piece of paper, sir? **A.** This is a notice placed on the bulletin board at the Tampa paging station and has been there since its inception and it reads:

"Mr. James C. Fields the owner of the paging system is admitted to the office at any time and his instructions on the

[Tr. 1081]

paging system carried out to the letter."

That was placed on the bulletin board and is unsigned.

PRESIDING EXAMINER: That is a bulletin board appearing where?

THE WITNESS: At the control point of the paging system in Tampa.

PRESIDING EXAMINER: Thank you.

BY MR. NEWFIELD:

Q. And I understand you to say that this or a similar sign has been up since the station was first in operation? **A.** Actually, judging from its yellowness, I believe it is the original.

PRESIDING EXAMINER: In other words the same sign has been up that you have just read?

THE WITNESS: Yes, sir.

MR. NEWFIELD: We wish to introduce in evidence if we may a photocopy of the sign and return the original to the bulletin board, if there is no objection.

PRESIDING EXAMINER: How do you wish the photocopy to be marked for identification?

MR. NEWFIELD: Marked as Fields Exhibit -- No. 2, would it not?

PRESIDING EXAMINER: Yes. The document will be so marked.

(DOCUMENT REFERRED TO WAS MARKED FOR IDENTIFICATION
AS FIELDS EXHIBIT NO. 2.)

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[Tr. 1306]

Tampa, Florida

March 3, 1961

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[Tr. 1307]

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ARTHUR A. GLADSTONE

a witness appearing for and on behalf of the Federal Communications Commission, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. DeVORE:

* * * * *

[Tr. 1318]

Q. I'm sorry to have interrupted you. Will you please continue now with the relation of the conversation between yourself and Mr. Pinson on March 12, 1958. A. Yes.

I think I was saying that I asked Mr. Pinson as to what his interest was in this station, and he indicated in response that Mr. Fields was his father-in-law and that he, Mr. Pinson, being familiar more or less with the technical aspects of the operation, was calling in Mr. Fields' behalf in order to straighten out whatever difficulty there might be.

Of course, at this time he had not yet received our letter. That is, Mr. Fields had not yet received our letter of March 12. And Mr. Pinson desired to know what was the reason that we had sent the telegram, and I explained to him that we had sent the telegram primarily because of what we had read in this newspaper story, that this raised some question in our minds as to what affiliation he had with the station, and by that time, as a result of reading the story, we coordinated from an examination of the files the fact that the control point for Mr. Fields' station was at the same address as the control point for Mr. Pinson's two-way station in Tampa. And I asked whether the control point was in fact at the same place, and he said yes, that it was in his office in Tampa and that the two control points

[Tr. 1319]

were operated together by his -- Mr. Pinson's -- telephone answering personnel.

I then pointed out that this did raise a question, that this went directly to the core of what we had in mind as a result of reading the newspaper article, and that we would wish to be assured that any operation or transaction by Mr. Fields was in fact an arm's-length transaction conducted by and in behalf of Mr. Fields solely and was not an effort by some subterfuge to obtain for Mr. Pinson the Tampa signaling operation which we had previously indicated to him we would not give on this basis without some further showing.

Mr. Pinson assured me that the operation was a bona fide arm's-length transaction conducted by his father-in-law. In fact, I remember

agreeing with him that, of course, his father-in-law had a right to go into business if he so desired, provided that the bona fides of the transaction were clearly maintained.

Mr. Pinson wished to be advised as to what would be required in order for Mr. Fields to comply with this basic requirement that I had indicated, and what we would require by way of assurances to show that this was the fact. And, so, I proceeded to outline to Mr. Pinson the things which would be desirable and which would be convincing in this regard and, I might say in my opinion, as a minimum requirement in order to demonstrate to the Commission actual control as required

[Tr. 1320]

under the statute and our rules.

What I indicated to him was the following: I said Mr. Fields will have to show and, in fact, supply all of the money required for investment and operating expenses of this facility. All the billing, advertising, soliciting, collection of accounts and other relations with the public must be conducted in Mr. Fields' name exclusively and clearly. There should be no intermixture of the business of Mr. Fields with the business of Mr. Pinson apart from the actual dispatching which Mr. Pinson's employees might do for Mr. Fields, or the other clerical office routine which they might follow.

Mr. Fields assured me that this was in fact what was being done --

Q. Mr. Gladstone -- A. I meant Mr. Pinson.

And he went on further and stated that Mr. Fields had in fact put up the money. He represented to me that he and Mr. Fields together had purchased two transmitters from Robert Dollar, that one had been sold to Mr. Fields, that Mr. Fields had paid for it, and that they would follow faithfully and explicitly the directions which I had given. And he wanted to know what further he could do. In fact, at that point he pressed that

we, on his assurances to me, would proceed to reinstate the station.

I indicated to him that this could not be done and

[Tr. 1321]

would not be done until we had an opportunity to consider a response to the letter that was going out that date.

We then embarked upon a further conversation relating to the TVI problem, and I suggested that it would be desirable, if we were to reinstate this grant, that Mr. Fields apply for a modification of license so as to get off the 40-megacycle frequency onto a 30-megacycle-band frequency and get out of his difficulties.

Mr. Pinson raised some question with me as to whether the lower band frequency was not under application at that time by Mr. Don Erwin in Sarasota, and I told him I did not believe that to be the case, that, so far as I knew, that frequency was available. And that just about covers the conversation.

Q. Did you in fact send out a letter on March 12, 1958? A. Yes, we did.

Q. To James C. Fields? A. Yes, we did, and it has already been referred to.

Q. What was the next thing that occurred with regard to the James C. Fields station? A. Well, the next thing that occurred was that on March 18, 1958, again in the morning, Mr. Pinson appeared at my office, which was then in the New Post Office Building, Washington, and my secretary advised me that he was there and wished to see me. I asked Mr. Palik to come in to my

[Tr. 1322]

office. I told Mr. Palik, when he came in to my office, that I wanted him to remain with me while Mr. Pinson was there.

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[Tr. 1331]

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THE WITNESS: ****
[Tr. 1332]

Well, what we have to do about it, of course, is attempt to evaluate it and to determine whether this warrants some further action. By "we" I mean myself and the staff.

We recognized that this was a problem that would have to be faced in the comparative hearing between these parties, between Mr. Rosenson and Mr. Pinson and his corporation. And, of course, we have a responsibility under the statute to see that a complete record is made and that all the facts are brought out, and, certainly, that any possible question of disqualification which this would raise, if true, is fully developed.

So we obtained authorization to come down and make an on-the-spot investigation, it not being our desire, intention or purpose to rely on what someone else presents which may not be the whole story. And so it was that at the end of March in 1959 Mr. Harrison of my staff and myself came down to this area to conduct such an investigation.

BY MR. DeVORE:

Q. During your investigation did you have any conferences with either or both Mr. Fields and Mr. Pinson concerning the operation of the Tampa one-way signaling station? A. Yes, we did.

Q. When and where did these conversations take place? Who was present? And what was discussed? A. The first conference with either of the two gentle-

[Tr. 1333]

men that you named occurred on the afternoon of March 30, and March 30 was a Monday and was the first working day following our arrival in the community.

Well, my first conversation with Mr. Fields was, as he related in his testimony, over the telephone. I called him at home. I told him who I was. I told him that I wished to speak to him about the Tampa one-way station of which he was the licensee. I offered to come to his home if that would suit his convenience. He said, I think as he related here, that he had guests and that he preferred to see me in Mr. Pinson's office. So we made an appointment for the afternoon of the 30th in Mr. Pinson's office.

In the afternoon -- and this was shortly after lunch; I can't be precise about the time -- we arrived in Mr. Pinson's office. Mr. Fields was there as I recollect. We went in to Mr. Pinson's private office. By "we" I mean Mr. Harrison, myself and Mr. Fields. And we sat down to talk.

Mr. Fields immediately raised with us the question of why we were conducting any investigation, why we were interested in him and his operations, and I replied that we could not at this time relate to him specifically the reason but that what we desired to find out was the nature of his operation, the extent to which he participated in it, the extent to which Mr. Pinson participated in it, and, in substance,

[Tr. 1334]

learn all about the operation and the interrelationships of Mr. Pinson and Mr. Fields.

I can frankly say that Mr. Fields was not particularly satisfied with that reply, and, I think, quite naturally, wanted to know more, but I insisted that we could not at that time discuss anything further with him.

I did assure him that before we left the area we would seek to have another meeting with him, and would at that time go into a full discussion of the entire situation.

Mr. Fields indicated a willingness then to tell us what he could, and I asked him a number of specific questions, including, for example, what rate did he charge for the service. He said he didn't know.

I asked him if he had a tariff. He said he didn't know.

I asked him if he knew what Part 21 of the rules was. He said no, he wasn't familiar with it.

And to all of these questions his additional reply was, "I leave it all to Charles."

I asked him what supervision he maintained over the operation. He asked, in effect, what do you mean by supervision? I said, "Well, do you go into the office? Do you look into the manner in which the operation is conducted? Do you give instructions to the operators and dispatchers? Do you attempt to ascertain whether there are any customer

[Tr. 1335]

complaints? Do you supervise solicitation, billing and so forth?" And to all of this he replied no, that he had nothing to do with it, and he explained that he put up the money for this, he said, because he believed that Charles had dropped the Tampa application because of some problem that he had with the Commission, but he hadn't been advised as to what that problem was, and that Charles had not gone further subsequently with the Tampa operation because of lack of funds. And Mr. Fields said, in effect, I gave him the money to go into this; I thought it would be a good investment for me; and Charles is running it.

At the end of an interval of this discussion Mr. Pinson arrived on the scene. Mr. Pinson greeted Mr. Harrison and myself effusively, said he was glad to see us, said that he knew in advance that we were coming down, that he had instructed his staff to be fully cooperative and to do everything that we wanted; in fact, he then asked, "Have you gotten everything you wanted? Is everybody cooperating?" I said yes.

[Tr. 1336]

There was some more general discussion which pretty much went over the ground that I have previously related that we went over with Mr. Fields. It was then mid afternoon, I would say, and Mr. Pinson asked whether Mr. Harrison and I would not like to go over to Tampa to look at the Tampa operation and view its operation. We indicated we would be very happy to do so; we desired it.

We went in Mr. Pinson's automobile. He drove us over to Tampa. We discussed things more or less cordially. Mr. Pinson was proudly exhibiting the way his two-way operation was conducted, he had a unit in his car and he showed us how it operated, and so on. When he brought us to Tampa, he then brought us to premises 708 Florida Avenue and introduced us to the operators there and showed us around, he showed us the physical facilities, the method of operation, et cetera, and then at the conclusion of our visit he drove us back to St. Petersburg and by the time we arrived at St. Petersburg it was getting dark. We thanked him for the opportunity to see the premises. And, as he has said, we had a government car and when he left us -- or when we left his car, we got in the government car and we drove away.

Q. Did you have any subsequent conferences with Mr. Fields and Mr. Pinson during your investigation? A. Yes, sir. On April 1, which puts us in the second day after the events I have just discussed, we had a call. I

[Tr. 1337]

don't remember now whether this telephone call was received the previous evening or that morning but as a result of the telephone call we went to Mr. Pinson's office and we got there in the morning. We had some further discussions with Mr. Pinson. Pinson, of course, was also anxious to know the purpose of our investigation and why we were there, and I was as diffident with him as I had been with Mr. Fields in revealing the purpose.

the ultimate purpose of our business other than to say that what we wanted was to learn all we could of the operations of Mr. Fields and the interrelationships of Mr. Fields and Mr. Pinson.

At this discussion on April 1 we had some discussion about the ledger sheet No. 145 and again went over the question of the erasure on that sheet. At this time I again asked Mr. Pinson to explain to me the circumstances relating to the delivery of the check of March 3d of Mr. Fields and its deposit on March 12th, and again Mr. Pinson told the same story, that he had told in Washington.

I might say at this conference Mr. Harrison was present. Mr. Harrison was present with me at all times throughout this investigation in Florida.

And Mr. Pinson pointed to a cigar box which was on the top of his desk and he said, "That is the box in which I have the stuff," and lifted the cover and there were some items in there which I did not examine closely, other than that there

[Tr. 1338]

were papers. And he said, "What we do, we get these things in the mail and we put them in the cigar box and they stay there until somebody has time to go to the bank and then we make the deposit."

And he again assured me the check had been delivered March 3 and deposited the 12th and the reason for not depositing until the 12th was that no deposits had been made in the interim between March 3 and March 12.

I then asked him who was the bookkeeper at the time of this transaction with Mr. Fields in March of 1958, and he first identified as the bookkeeper a Joann Wiles, I think it is. On further questioning as to where this Miss or Mrs. Wiles might be found it developed that she was deceased. And we then went into a discussion to ascertain who previous and subsequent employees handled his books and he identified a Mr. Bomhard.

At this time we also discussed -- oh, we made a request to look at his corporate books and records and tax returns, and Mr. Pinson explained to us that some of the books and records were not available and that his accountant had these documents, that there were no tax returns because the corporation up to that time had not filed any tax returns since its operations had been conducted at a loss.

That just about sums up the conference at that time. Following this conference with Mr. Pinson and on the same date,

[Tr. 1339]

at the same time but following this discussion Mr. Fields arrived and Mr. Fields and Mr. Pinson were both present together. At that time I asked Mr. Fields if he would present to us the original of the check of March 3, 1958 which he had delivered to Mr. Pinson and present his check book with the stubs that would reveal the issuance of that check and the checks immediately preceding and following.

Mr. Fields stated that he did not feel he should produce that material, that that would be an invasion of privacy. I might say by way of background to this that it had already been revealed to us that Mr. Fields kept no separate books of his own in relation to his business or account books or ledger books or check books or anything else.

I explained to Mr. Fields that under these circumstances where there is a comingling or merger of one's personal business with a regulated business, which is what he presumably was in, that the licensing authority or regulatory authority had a right to scrutinize all of the material where the comingling had occurred; that this was just an unfortunate problem but it was effectively the law. And I pointed out to him that under Section 220 of the Communications Act that the Commission and its duly authorized employees and agents have a right of access at all times to the business accounts, records, et cetera, of a regulated entity.

* * * * *

[1348]

PRESIDING EXAMINER: The hearing will be in session.

BY MR. DeVORE:

Q. Mr. Gladstone, did you have any further meeting with either Mr. Fields or Mr. Pinson during your April, 1959, investigation? A. Yes, sir, we did.

On the morning of April 3, the day after the events that I had previously related, at about five or ten minutes of eight in the morning we received a phone call at the place we were staying from Mr. Pinson and he seemed quite eager to make contact with us, and what he said to us was, "Will you please come right down to the office?" And I indicated that we were just getting up and that it would take us some reasonable interval to get dressed and have breakfast, but that I thought we could conveniently get down to the office about 9:30. So an appointment was made to do that.

When we came down to the office Mr. Pinson took us again into his own private office, and there exhibited to us certain original ledger cards and original ledger sheets, and he explained that the entries on the ledger cards did not match the entries on the ledger sheets, and he further indicated that these documents were documents that had been prepared by his former bookkeeper Mr. Bomhard, and he stated -- and I now wish to quote -- that Bomhard had "changed these records in order to frame [him] (Pinson)."

[Tr. 1349]

And then he went on and indicated that he had fired Mr. Bomhard back in May or June of 1958. And he alleged certain other complaints about Mr. Bomhard. He said Mr. Bomhard had stolen some of his accounts and gone to work for a competitor and done certain other things which, if true, might raise some questions.

MR. NEWFIELD: I'm sorry. I couldn't hear that last statement.

PRESIDING EXAMINER: Will the reporter read it back, please.

(The record was read by the reporter.)

THE WITNESS: About Mr. Bomhard.

Mr. Pinson offered to have the material which he showed us photostated and supply us with copies, and we agreed that, if he wished to do that, we certainly would pick it up and take it with us. And he said he thought he would have it ready the next day, and asked us to drop in the next day and pick it up.

The next day -- April 4-- we stopped by at Mr. Pinson's premises -- I don't recall the time of day -- in order to pick up this material, but we were advised by Mr. Pinson that it was not yet ready. And, so, I suggested that if he thought it was material, he should mail it to us and we would receive it in Washington. And that is the end of our activities in Florida.

[Tr. 1350]

We subsequently returned to Washington, either the next day or the day after.

BY MR. DeVORE:

Q. During any of the occasions when you visited the offices either in St. Petersburg or Tampa or at the times when you had discussions with Mr. Fields or Mr. Pinson were you shown an amendment to the March 13, 1958 employment contract between Mr. Fields and Mr. Pinson which, in effect, would change and did change the percentage to be paid Mr. Pinson from 30 percent to 50 percent? A. No, sir, we were neither shown such a document nor were we advised of the existence of such a document, nor of its terms.

Q. Shortly after your investigation in April 1959 and when you returned to Washington, did you have an additional contact with Mr. Pinson?

A. Yes, sir, I did.

Q. Would you relate what occurred at that time? A. On April 7, at some time during the day, Mr. Pinson arrived at my office, which still was in the New Post Office Building. My secretary advised me that he was there and wished to see me. I asked Mr. Harrison to come in to my office, and I then invited Mr. Pinson to come in.

Mr. Pinson came in and at that time handed to me these documents which I have here. These documents consist

[Tr. 1351]

of photo-processed copies of certain ledger sheets and certain ledger cards which I believe to be the sheets and cards which he had shown me the originals of on April 3 and which he had discussed at that time, and he so identified them.

At that time he also showed me some additional ledger cards and sheets which he said contained similar alterations or mismatches of entries, and he asked me if I was interested in obtaining those, and I indicated that I thought that the material he was then submitting was probably sufficient to demonstrate the point he was trying to make.

When he handed me these documents -- and I say these are the documents which he theretofore was supposed to deliver to us in Florida -- I made a note contemporaneously; in fact, while he was talking; attached that note to the documents, and the note is still here. That is all that Mr. Pinson handed to me. That is all that I received from him.

This material was put in the file relating to the case, and has remained there constantly since.

Q. Mr. Gladstone, Mr. Pinson in his testimony made some statement as to the relative proportion of the mobile radio operators which operated under a contract with a telephone answering service. Do you have knowledge of the situation in the industry either at the time when Mr. Pinson

[Tr. 1352]

and Mr. Fields contracted or presently? A. Yes, I do with respect to both that time and the present time.

* * * * *

[Tr. 1378]

CROSS-EXAMINATION

BY MR. NEWFIELD:

* * * * *

[Tr. 1382]

Q. I will ask you to state whether you refer to the document on which you found a notation as a ledger card or ledger sheet. A. I can be very specific, that the document that I am referring to has already been referred to as a ledger sheet. It bore the number 145. It had on it an entry which indicated March 12 and reflected a transaction with James C. Fields relating to a conditional sales contract and the receipt of a check which was in the amount, I think, of \$741.77. In other words, it reflected the transaction that Mr. Fields and Mr. Pinson had already referred to.

[Tr. 1383]

Q. And you say that the fact that the check was not negotiated or cleared at the bank until March 12 was confirmed in your judgment by this Ledger Sheet No. 145? A. No, sir, I did not say that.

Q. What did you say? A. I said that examination of the reverse side of the check showed that it had been deposited in a bank on March 12, 1958.

Q. You didn't use the word "negotiated" in your original testimony? A. I said "deposited" perhaps, but what I meant was negotiated, and if there is any doubt about it I now say negotiated. If deposited is a suitable word, more readily intelligible, I will use the word deposited.

Q. I think you used the word negotiated originally. I thought you were taking exception to my question because I used the word negotiated.

A. No, sir, I don't take exception to it on that account. You said my understanding at the time the check was negotiated was confirmed as reflected in this ledger account. I did not say that because the ledger account perhaps is a self-serving declaration. But the endorsement of the bank on the check is indisputable evidence as to when the check was left with the bank.

Q. What was your statement then, and what is your

[Tr. 1384]

statement now -- A. I have just made my statement.

Q. As to --

May I complete my question?

A. Certainly. I am sorry I interrupted you.

Q. As to the confirmation which you found on this occasion of the fact which you have just referred to, namely, that it clearly appears that the check was cashed at the bank on the 12th day of March. A. I did not say it was cashed at the bank. I did not know whether it was cashed at the bank. I am not trying to quibble with you, Mr. Newfield, but neither will I permit you to put words in my mouth.

PRESIDING EXAMINER: Well, let us not have --

THE WITNESS: What I am saying is that examination of the check shows that it purports to have been executed on March 3. Examination of the back of the check shows that it was first presented to a bank, whether for cash or deposit I don't know, but it was first presented to a bank for handling on March 12. I said that I noted that on Ledger 145 there is an entry relating to this transaction which reflects in Mr. Pinson's books the entry of this receipt on March 12.

I stated further that this one line on the sheet bears an erasure.

[Tr. 1385]

Q. And did you not also state -- Do you not now state that that entry, to which you refer, confirms the date of March 12 as the date upon which the money was -- rather, the check was presented to the bank, the first bank for payment? A. Well, I don't know whether this is so or not. All I can state is that Mr. Pinson's books indicate, by virtue of this entry, that the amount was recorded on his books on March 12.

Q. Are you now saying that you didn't use the term "confirmed" in your prior testimony? A. I won't say that, Mr. Newfield, no. I may have said it.

Q. You don't disavow that word now, do you? A. No, I don't disavow it. I think it is a matter of indifference. I think that your questioning has clarified my thoughts on it, and if there is any doubt now between what I said on direct and what I say now, I more clearly reflect my intention now.

Q. Is it not a fact, Mr. Gladstone, that your examination at that time, of the original Ledger Sheet 145 which was exhibited to you by Mr. Pinson, indicated that there was an obvious erasure of the entry to which you just referred? A. I think I have already stated that, that there was an obvious erasure on the sheet, if I understand the question

[Tr. 1386]

correctly.

MR. DeVORE: Mr. Newfield, it might be helpful if you would show that sheet to the Examiner. I think everybody else here has seen it except the Examiner.

MR. NEWFIELD: Yes, I would be very happy if the Examiner would care to look at it.

PRESIDING EXAMINER: No one has disputed the fact that that single entry does show an erasure, as I understand the testimony. Is that not correct, Mr. Newfield?

MR. NEWFIELD: That is correct.

PRESIDING EXAMINER: Mr. DeVore?

MR. DEVORE: Yes.

PRESIDING EXAMINER: Thank you.

BY MR. NEWFIELD:

Q. Now, Mr. Gladstone, I will invite your attention to that sheet, to the sheet which I am now showing you, which purports -- It is numbered 145, Charles P. B. Pinson, Inc., a ledger sheet, and I will ask you this question:

Does this appear to be the same sheet that you saw in Washington?

A. It does indeed.

Q. You recognize it as such? A. I do, yes.

Q. No doubt about it? A. Not a doubt, no, sir.

[Tr. 1387]

Q. May I ask if you will state upon examination whether or not you see any indication of any change whatever in the sheet as it is now shown you from what it was at that time? A. I cannot say whether there are any other changes on there, because I paid no attention to any other legend that may appear on there. The entry that I see there is the one that I recognize, and that appears to be the same sheet, and that is the best I can do for you at this time.

Q. Thank you. That is quite sufficient.

MR. DEVORE: Mr. Newfield, may I see that sheet you exhibited to the witness?

MR. NEWFIELD: Certainly. Mr. DeVore, I would be very happy to make the sheet available to you, if you wish, to have photocopies made of it.

MR. DeVORE: I have no desire to have photocopies made of the sheet.

MR. NEWFIELD: I beg your pardon?

MR. DeVORE: I have no desire to have photocopies made of the sheet.

BY MR. NEWFIELD:

Q. Mr. Gladstone, I will ask you to state whether the first reference to the erasure about which you have testified at the conference was made by you. A. Yes, it was, because I raised a question about it.

[Tr. 1388]

Q. I will ask you whether it is not a fact that on this same occasion Mr. Pinson offered to leave with you one or more photocopies of that same ledger sheet. A. I have no such recollection, Mr. Newfield.

Q. You have no such recollection of any -- A. No, sir.

Q. -- of any such offer by Mr. Pinson on that occasion? A. No, sir.

Q. Well, to refresh your recollection, may I suggest to you that Mr. Pinson did make such an offer, and you declined when he stated that he would not like to leave it with you if the information contained on the sheet were made available to the public in a public file. Do you recall that, sir? A. No, sir.

Q. That conversation? A. No, I do not.

Q. You do not.

Are you positive that no such offer or conversation occurred?

A. No, sir, I am not positive. I said I could not recollect such a conversation.

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[Tr. 1431]

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CROSS-EXAMINATION (Resumed)

BY MR. NEWFIELD:

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[Tr. 1438]

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Q. Mr. Gladstone, I think I began asking you a question with reference to the bookkeepers which were employed by Mr. Pinson's company, and was referring specifically to the occasion of your visit on April 1, 1959, to the offices of the company in St. Petersburg.

What was the conversation with reference to that topic, Mr. Gladstone? A. I endeavored to ascertain from Mr. Pinson the name or the identity of the bookkeeper who was in his employ at the time of the consummation and recording of the transaction of March, 1958, with Mr. Fields. That was -- It was in response to those inquiries that I received replies from Mr. Pinson.

His first reply was to give me the name which I recollect as Joanne Wiles. When I inquired further as to where this Miss or Mrs. Wiles might be found, he related to me that she was deceased.

Q. Mr. Pinson related this to you? A. Yes, sir.

Q. It was obvious she could not have been the bookkeeper at the moment you were there?

[Tr. 1439]

A. I wasn't inquiring who the bookkeeper was at the moment I was there. I knew who the bookkeeper was at the moment I was there.

Q. Who was that, Mr. Gladstone? A. I believe her name was Helen Smith.

Q. And I believe you stated that a man by the name of Bomhard was finally identified as the bookkeeper who was present during the month of March, 1958? A. Ultimately I ascertained that a Mr. Bomhard was the bookkeeper who was present during that interval, but at this

particular time Mr. Pinson was unable to recall whether Mr. Bomhard was the bookkeeper at that time or not. He merely remembered that a Mr. Bomhard had worked for him at some time previously.

Q. When was it that you ultimately ascertained the identity of this bookkeeper? A. Shortly thereafter, through inquiries that were made in other places. Or I will amend that. I may have known it already on this particular occasion through other sources, but the identity of Mr. Bomhard and his placement as an employee of Mr. Pinson at the interval in question was ascertained definitely through sources outside of Mr. Pinson's premises.

Q. Is it not a fact that Mr. Pinson on this occasion gave you the name of every single bookkeeper that he had ever

[Tr. 1440]

employed in the business? A. I do not so recollect and I do not believe this to be correct, because the only two names that I recollect are Joanne Wiles and Mr. Bomhard, and he was very indefinite with respect to any other employes. As a matter of fact, it developed at this time, through further inquiry on my part, that the turnover in help at Mr. Pinson's place was at a terrific rate as evidenced by the fact that he told me --

Q. Just a minute, Mr. Gladstone.

MR. NEWFIELD: I am going to object to the answer.

THE WITNESS: I would like to finish my answer.

MR. NEWFIELD: Not responsive.

MR. DeVORE: Mr. Examiner, I am going to object to the attorney interrupting the witness' answer. He has a right to make an objection, and he has the right to move to strike, but the witness should be permitted to finish the answer he is giving.

PRESIDING EXAMINER: When the witness goes into matters that counsel believes is not responsive, I think you would follow the same practice, and I can't see why he should not interrupt. And the question

asked did not in any way, shape or form call for an answer as to the turnover of employes at the installation other than the bookkeepers employed.

That portion of the answer, as to the turnover of employes being terrific, is stricken.

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[Tr. 1452]

Tampa, Florida

March 6, 1961

* * * * *

[Tr. 1459]

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BY MR. NEWFIELD:

Q. I will ask you a further question, Mr. Gladstone. In looking through the records of the bank for the month of July did you not determine that there was an interval between July 14 and July 21 when no deposits were made?

PRESIDING EXAMINER: Will you specify the year, please?

MR. NEWFIELD: 1958.

[Tr. 1460]

THE WITNESS: I have no such recollection, Mr. Newfield. It may be the fact. I have no knowledge.

BY MR. NEWFIELD:

Q. But if that is the fact, again you would say you don't think that is material? A. Yes, sir, that is correct.

PRESIDING EXAMINER: I would like counsel and the witness both to refrain from commenting on materiality of the evidence. I can see where it adds nothing to the record.

BY MR. NEWFIELD:

Q. Did you also observe, Mr. Gladstone, that there was an interval in the making of deposits from April 30 --

PRESIDING EXAMINER: We will go off the record and permit the reporter to take this call.

(At this point a short recess was taken, after which the hearing was resumed.)

PRESIDING EXAMINER: We will return to the record.

The record will show that the reporter has had opportunity to accept the call.

MR. NEWFIELD: I withdraw the previous question asked before the short adjournment.

BY MR. NEWFIELD:

Q. Mr. Gladstone, I will ask you if you did not discover, in looking at the bank records in 1958, that from May 22, on which date one deposit was made, no deposit was made

[Tr. 1461]

until the 2nd of June, on which two deposits were made? Do you recall seeing that? A. No, sir, I have no knowledge of that.

Q. Do you have any knowledge of the fact, from your examination of these records, that no deposit was made from July 14 to the 21st?

A. No, sir.

PRESIDING EXAMINER: These dates all refer to 1958, do they not?

THE WITNESS: Yes.

BY MR. NEWFIELD:

Q. And that no deposit was made between July 1 and July 7? A. No, sir.

Q. Did you notice that from November 4, 1958, a period of 15 days elapsed before the next deposit was made? A. No, sir.

Q. You didn't see that? A. No, sir, I didn't look for it.

Q. You mean you subpoenaed all these bank records for the entire period and didn't look after the period of March 12? A. No, sir. We looked at all the records. We looked at various portions of the records for different purposes. Our purpose in looking at the dates of deposit slips, as I testified previously --

[Tr. 1462]

Q. I object --

MR. NEWFIELD: Mr. Examiner, I object to the witness giving an explanation as to what his reasons and purposes were, which is not responsive to my question.

MR. DeVORE: Mr. Examiner, let me point out that the attorney has asked a question which calls for an explanation. He asked didn't you look at these other periods, and implying that there was something wrong with not looking at these other periods, and I think the witness is entitled to explain the reason why he didn't look at the other periods.

PRESIDING EXAMINER: Will the reporter read the question back, please.

(The record was read by the reporter.)

PRESIDING EXAMINER: I think the witness' answer was responsive to the question, Mr. Newfield; the question is asked in the context of did he look after March 12. He was responding that he did look, but for other purposes.

THE WITNESS: May I finish my answer? I was interrupted in the middle.

MR. NEWFIELD: I object to him adding to that period which I think is completely unresponsive and gratuitous.

PRESIDING EXAMINER: I have overruled the motion to strike. Will you continue, Mr. Gladstone.

THE WITNESS: If I may finish my answer, what I was

[Tr. 1463]

explaining was that we looked at all of the records, but we looked at various portions of the records with different objectives in view and for different reasons. We looked at the sequence of deposits for the period from January 1 through March 12 because that seemed to us to be material.

I have no knowledge of the sequence of deposits at other times because I did not specifically look at them.

MR. NEWFIELD: I move to strike that last answer completely.

PRESIDING EXAMINER: The motion to strike is denied. It was completely responsive, Mr. Newfield.

BY MR. NEWFIELD:

Q. I take it then, from the answer you have just given, that you likewise didn't notice that a period of nine days elapsed from the deposits, eight deposits which were made on November 13, 1958? A. I do not know whether that is so.

MR. NEWFIELD: I have not asked these last two questions properly. I would like to clarify that, Mr. Examiner.

BY MR. NEWFIELD:

Q. I will ask you, Mr. Gladstone, if you observed that no deposits were made from October 20, 1958 until November 4. A. I have no knowledge of that. I don't know whether that is correct. I don't know whether your statements as to the other items are correct, and I am hopeful I am not implying that they are by my answer. I have no knowledge of these

[Tr. 1464]

things because I didn't look at them.

Q. Would you like to look at the bank deposits? A. No, sir, I would not.

Q. And verify --

PRESIDING EXAMINER: Mr. Newfield, if you wish that evidence to come in, I request that you put it in through your own witness on rebuttal.

BY MR. NEWFIELD:

Q. Mr. Gladstone, I think on direct testimony you stated that you had your first conference with Mr. Fields on March 30, 1959, a Monday. Is that correct? A. That is correct.

Q. And am I correct in my recollection that you stated that the first conversation was as related by Mr. Fields on the telephone? A. That is correct also.

Q. And he asked you why you were there to investigate? A. Yes, sir.

Q. And at that time you didn't indicate any specifics at all, did you? A. No, sir, other than to say that we were interested in learning about his operation in Tampa and the interrelationships of his operation with those of Mr. Pinson.

Q. And he pressed you for further information which you did not then give him?

[Tr. 1465]

A. That is correct.

* * * * *

[Tr. 1500]

Q. Have you had any further discussions with Mr. Rosenson during the course of this hearing? A. I have exchanged many pleasantries with Mr. Rosenson during the course of the hearing. I have asked him a few questions about matters such as when his counsel would appear and other things. He has asked me a number of questions. Indeed, so have you.

Q. You haven't exchanged any pleasantries with me, have you, Mr. Gladstone?

MR. DeVORE: I object to the question as immaterial.

PRESIDING EXAMINER: The objection is sustained.

BY MR. NEWFIELD:

Q. You have a very strong feeling, do you not, about this case and about this case personally, Mr. Gladstone?

MR. DeVORE: I object to the question. The witness' subjective feelings are not material to this proceeding. It is a proceeding to determine the facts and with relation to the operation of Mr. Pinson and Mr. Fields.

PRESIDING EXAMINER: I think it is proper to attempt to show bias on the part of the witness.

THE WITNESS: I have no strong feelings in any direction, Mr. Newfield, except to try and develop the facts on this record.

[Tr. 1501]

BY MR. NEWFIELD:

Q. You have not resented accusations which Mr. Pinson has made to you personally? Or about you personally? A. Resentment is a strong word.

PRESIDING EXAMINER: Mr. Newfield, I have foreclosed questioning with reference to those matters in view of the Commission's ruling on them previously in the proceeding. I am again foreclosing questioning on them.

MR. NEWFIELD: I offer them, Your Honor, only on the question of bias to the extent that they may show bias, not going into the details.

PRESIDING EXAMINER: I will permit the question only whether or not Mr. Pinson did make accusations.

BY MR. NEWFIELD:

Q. That is correct, is it not, Mr. Gladstone? A. Yes, it is.

Q. And you feel they are unjustified? A. I know they are unjustified.

Q. You don't feel very kindly toward Mr. Pinson for that reason, do you? A. It is not a question of whether I feel kindly or unkindly. That is a loaded question. My feelings are a matter of complete indifference, Mr. Newfield. All public servants are from time to time subjected to this kind of thing.

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[Tr. 1520]

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RE CROSS EXAMINATION

BY MR. NEWFIELD:

* * * *

[Tr. 1527]

Q. What time was your appointment with Mr. Fields? A. I just don't recollect. It was around that time when we presented ourselves.

Q. And he was not present? A. I already told you I don't recall whether he was present when we arrived or came afterward.

Q. I am speaking of Mr. Fields, not Mr. Pinson. A. I am speaking of Mr. Fields. Whenever it was that Mr. Fields appeared, whether he was already there or came in subsequently, then the three of us went into Mr. Pinson's private office which was opposite the area where Miss Smith performed her functions and we were seated there, the three of us, when Mr. Pinson arrived later.

Q. You had met Miss Smith previously before you left for lunch, I believe you stated? A. That is what I said.

Q. And was Mr. Harrison there on this occasion? A. He certainly was.

Q. And did you identify yourself when you first spoke to her? A. We identified ourselves immediately upon meeting -- the first contact with anyone in Mr. Pinson's office by presenting the official Commission identification card which we carry.

* * * *

[Tr. 1531]

Q. Do you not recall asking her about her citizenship and she told you she was a native of Scotland? A. That could be. I have a vague recollection that she talked with a slight accent and we may have asked her about it just by way of being pleasant.

Q. Do you not recall that she told you that she was a subject of Great Britain and had not become an American citizen? A. She may have but, Mr. Newfield, I don't recall. It has no materiality to me and I try to keep my mind uncluttered with things of that nature that are unimportant.

MR. NEWFIELD: I move to strike the last statement as being unresponsive and a conclusion.

PRESIDING EXAMINER: The motion is granted. I do want to point out it was a repetitive question, too.

BY MR. NEWFIELD:

Q. After you returned from lunch is it not a fact that you went into Mr. Pinson's office and were going through some of the files and correspondence on his desk before Miss Smith returned from lunch?

A. No, sir, that is not so.

Q. Did you look at any other files or documents or correspondence at any other place after you returned from lunch before any employee of the Pinson company was present? A. No, sir.

Q. Did you do it on any other occasion?

[Tr. 1532]

A. No, sir.

Q. At no time during your visit to St. Petersburg, is that correct?

A. At no time at any time at any place have I or my associates within my purview looked at any material or documents without authority and consent of the person to whom such documents belonged.

Q. Now, I want to ask you this, Mr. Gladstone, concerning the bookkeeping setup. You did ask her general questions about that, did you not? A. Yes, I did.

Q. And you also asked her some questions about pocket paging in Tampa, did you not? A. Yes, I did.

Q. And did you not ask her: was it billed separately? A. I did.

Q. And what response can you recall that she gave you to that question?

MR. DeVORE: Mr. Examiner, I am going to object on the basis of hearsay evidence.

PRESIDING EXAMINER: I am sustaining the objection. I do not wish to get into the hearsay field again.

* * * * *

[Tr. 1534]

Q. When you were examining this advertising and other literature in the outer office there where the bookkeeper is seated -- is that correct? A. That is correct.

Q. Is it not a fact that when she returned from the rear of the building with this card I have exhibited to you that you were going through the filing cabinet? A. If we were going through the filing cabinet and I can't remember whether we were at this instant or not, whenever we commenced going through them it was with her consent and in her presence. Now, if we started while she was in the room I would think we continued the effort while she was out of the room.

Q. Did you ask her what office she held in the corporation? A. Yes, sir.

Q. What did you ask her specifically? A. I asked her what her position was and she identified herself as the bookkeeper. She also stated to us that Mr. Pinson had advised her about our visit and she was to give us every assistance and cooperation.

Q. Do you recall referring to the delinquent account letters which were on her desk and showed her one in particular addressed to Burns Air Conditioning and Heating? A. Yes, I do.

[Tr. 1537]

BYRON E. HARRISON

was called as a witness on behalf of the Federal Communications Commission and being first duly sworn was examined and testified as follows:

[Tr. 1556]

CROSS-EXAMINATION

BY MR. NEWFIELD:

[Tr. 1562]

Q. Is Miss Smith the one that has a rather -- had a

[Tr. 1563]

rather heavy Scotch brogue? A. Very definitely, yes, sir.

Q. Do you recall Mr. Gladstone asking her whether or not she had an FCC license? A. No, sir. I don't recall him ever asking her for an FCC --

Q. Do you recall any questions along the line of her citizenship? A. No, sir, no questions whatsoever as to her citizenship.

Q. Do you recall how long it was you worked there in the morning, Mr. Harrison, before you went to lunch? A. Well, as I recall, we left for lunch at around 12:00 or 12:30 that day. I can't be sure.

Q. And do you recall where you went and how long you remained or what time you returned? A. As to where we had lunch that day, I do not recall. I would say that we were gone about an hour.

Q. And when you returned was Miss Smith present? Do you recall seeing her when you returned, or did she return sometime, a short time thereafter? A. Miss Smith was in and out that afternoon. I can't say positively that she was there when we returned. Mr. Fields was there, but I am not sure whether Miss Smith was there at that moment. But she was there during the afternoon.

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[Tr. 1565]

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FRANK PALIK

a witness appearing for and on behalf of the Federal Communications Commission, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DeVORE:

* * * * *

[Tr. 1569]

Q. Can you now answer my other question concerning whether you had any conversations with Mr. Pinson relative to the two applications?

A. Yes. Mr. Pinson came to Washington and appeared at my office, and I repeated the same line of reasoning, and again said to Mr. Pinson that I did not, would not recommend a grant without a hearing unless there were suitable amendments filed to the applications.

Q. Mr. Palik, did you participate in a conversation over the telephone on March 12, 1958 between Mr. Gladstone and Mr. Pinson? A. Yes, I did.

Q. Can you relate what occurred during that telephone call? A. On March 10, 1958 the Commission revoked or, rather,

[Tr. 1570]

rescinded its earlier action of granting a license to Mr. James C. Fields for his one-way signaling station in Tampa.

On March 12, 1958 Mr. Pinson called Mr. Gladstone and at the outset of the conversation Mr. Gladstone told Mr. Pinson that, with his consent, he would like to put me also on the telephone conversation because some engineering questions might arise. Mr. Gladstone indicated that the matter --

Let me repeat.

Mr. Gladstone inquired as to the nature of the business that Mr. Pinson was calling about, and Mr. Pinson stated that he was calling about the one-way signaling station of Mr. Fields which had been taken off the air.

Mr. Gladstone inquired as to why he was calling instead of Mr. Fields. Mr. Pinson said Mr. Fields is my father-in-law and I thought that some engineering matters might be involved in the conversation, and he indicated that he was more conversant with such matters than Mr. Fields. They were at that time involved in a case of television interference with Mr. Fields' one-way signaling station.

I noted in the conversation that the control point for Mr. Fields' one-way signaling station and Mr. Pinson's two-way radio telephone system were at a common address, and I inquired whether in fact the location at that address was common to both stations. Mr. Pinson advised me that it was.

[Tr. 1571]

During the conversation Mr. Gladstone reminded Mr. Pinson that about a year and a-half to two years earlier we had refused to grant both applications of Mr. Pinson for one-way signaling stations in St. Petersburg and Tampa, that one of which, the application for Tampa, was subsequently dismissed at Mr. Pinson's request.

Mr. Gladstone went on to state that it appeared to him that had the relationship between Mr. Pinson and Mr. Fields been known at the time we granted Mr. Fields' application we certainly would have dug very deeply into the matter.

Under the circumstances that it was not disclosed that there was any connection whatsoever between Mr. Pinson and Mr. Fields when Mr. Fields filed his application, Mr. Gladstone stated to Mr. Pinson that it looked to us as though the application of Mr. Fields was filed with the idea of sliding it through the Commission to obtain a radio facility which Mr. Pinson was unable to obtain without hearing in his own name.

Mr. Pinson inquired whether there was anything that we particularly had to be satisfied upon as to the bona fides in Mr. Fields' application and in the over-all operation of the Pinson and Fields facilities. Mr. Gladstone indicated that it would be necessary for a showing to be made that all of the costs incidental to the filing of the Fields application, including costs of engineering, any legal fees,

[Tr. 1572]

all of the cost of construction of the station including equipment, site rental, would have to be shown to have been paid by Mr. Fields, that in the operation of the station it would have to be demonstrated if Mr. Pinson was operating the facility for his father-in-law that this was in fact an arm's-length transaction where Mr. Fields retained effective operational control as contrasted to a passive control where the reins of the operation would be turned over to someone else.

Mr. Pinson replied that, of course, the full cost in all respects of the obtaining of the station authorization by Mr. Fields, the construction of the station, its maintenance, the rental of the site, were all borne by Mr. Fields; that the operation was being conducted by Pinson.

Mr. Gladstone earlier had indicated that it was customary that where a facility was operated by a telephone answering service or another party other than the licensee, that it was customary for a contract to be negotiated between the licensee and the operating entity; that such contract necessarily would have to spell out all the details of such an arrangement, and that all advertising, promotion of accounts, billing, collection would

have to be borne in the name of the licensee. Any telephone directory listings purveying the service rendered by the one-way signaling station of Mr. Fields would have to be in Fields' name.

[Tr. 1799]

Tampa, Florida

March 8, 1961

* * * * *

[Tr. 1802]

* * * * *

FRANK PALIK

having been previously duly sworn, was recalled as a witness on behalf of Charles P. B. Pinson, Inc., and was examined and testified further as follows:

* * * * *

[Tr. 1803]

PRESIDING EXAMINER: Well, he states that at the present time he does not contemplate — At such time as we face that, we will take up that question at that time.

MR. NEWFIELD: Well, then, may I inquire as to what limitations would be placed upon surrebuttal witnesses should they be called? Would their testimony be under the practice and procedure of, limited to any matters which we should put on commencing as of now?

PRESIDING EXAMINER: I would require that. We have to terminate this proceeding some time.

MR. DeVORE: Well, Mr. Examiner, let me point out the rebuttal is not started as of now; the rebuttal started yesterday.

PRESIDING EXAMINER: That is correct.

MR. DeVORE: And if we put on surrebuttal it would relate to the rebuttal case of Mr. Newfield and not limited to any witnesses that would come hereafter.

DIRECT EXAMINATION

BY MR. NEWFIELD:

Q. Mr. Palik, in connection with your investigation of this matter, the matter which is at hearing now, will you state whether or not you made inquiries at the direction of the chief of the division concerning the receipt by Mr. Edward Deeters of the William Foss engineering firm in Washington, D. C. from Mr. Fields of payment for engineering work which

[Tr. 1804]

that firm performed? A. I did.

Q. Did you not go to Mr. Deeters' Washington office to make this inquiry? A. I did not.

Q. Was this inquiry made over the telephone? A. It was.

Q. You had a telephone conversation with Mr. Deeters with respect to this? A. That is right.

Q. I will ask you if he did not tell you he was unable to find any record which would indicate how or when he received payment for the Fields engineering work which he did. A. That is not true.

Q. What did he tell you with respect to his records concerning such payment. A. He stated that he received a check in payment. He was unable to ascertain from his records whose check it was, but he had a notation on a bank record which indicated what that amount was.

Q. Did he disclose to you the amount? A. Yes, he did.

Q. What was that amount? A. I don't recall the specific amount but we checked the figure against a check which, as I recall, was in the

[Tr. 1805]

Pinson account, and the date and the amount of that check was information given by Deeters.

Q. I am asking you if Mr. Deeters informed you as to his records, Mr. Palik. A. I just told you.

Q. I am speaking —

PRESIDING EXAMINER: The question has been answered, Mr. Newfield. Your last question was the amount of the check.

MR. NEWFIELD: No. I asked what Mr. Deeter's records showed.

PRESIDING EXAMINER: You asked the amount from his records.

BY MR. NEWFIELD:

Q. Mr. Palik, I will ask you if Mr. Deeters did not inform you and Mr. Gladstone previously that he had a clear recollection that payment for this engineering had been received from Mr. Fields. A. I don't have any such recollection.

Q. You have no such recollection? A. That is correct.

Q. You are stating that Mr. Deeters never told you that — A. I did not state that.

Q. Well, I am asking you, are you stating that Mr. Deeters told you, in effect, that he had not received the pay-

[Tr. 1806]

ment from Mr. Fields? A. I am stating that Mr. Deeters advised me that his records did not clearly disclose from whom he had gotten the check for the engineering.

Q. Aside from what his records disclosed or did not disclose, Mr. Palik, my question now to you is: Did not Mr. Deeters tell you that his recollection was that he had been paid by Mr. Fields and not by Mr. Pinson? A. I do not have that recollection.

Q. Mr. Palik, can you identify the check at least as to amount? A. If I saw it, I think I could.

Q. Do you have any present recollection of the amount? A. My recollection is that it was somewhere in the order of \$175 or thereabouts.

Q. Do you recall the approximate date, Mr. Palik? A. I am not sure.

Q. Mr. Palik, I show you FCC Exhibit No. 17, a rather poor photocopy but I think it is legible enough to indicate the amount of the check

and the date. A. That is the check.

Q. And the amount of \$170.60? A. That is it.

Q. Under date of August 19, 1957; is that correct? A. That is correct.

[Tr. 1807]

Q. Now am I correct in my understanding of your testimony, Mr. Palik, that Mr. Deeters informed you, after referring to this particular deposit in his bank account, that this check included payment for the Fields engineering work which he performed? Is that what he stated or is that your conclusion? A. It is neither my conclusion nor what he stated.

Q. Well, can you clarify this point? I understood you to say that this had been identified by someone as a check which included payment of the Fields work performed by Mr. Deeters. You did not so testify?

A. I would be glad to clarify. Mr. Deeters in the conversation did not use the term "included", and his conversation with me was that this was for the Fields engineering. But he did not say it included so as to imply that perhaps the check covered other matters.

Q. So he indicated to you that this check, entire amount, was in payment of the Fields charge? A. That was my understanding from what he told me.

Q. Did you ascertain in talking to Mr. Deeters that he had received one or more communications either by mail or by telephone from Mr. Fields with reference to this work? A. I have no recollection of conversation on that point.

[Tr. 1808]

Q. You have recollection of inquiring about the transaction of Mr. Deeters? A. I have no clear recollection of that. If such did come up, it would have been in connection with trying to establish from whom payment was received by Deeters or William Foss for the Fields engineering.

MR. NEWFIELD: I have no further questions of Mr. Palik.

CROSS-EXAMINATION

BY MR. DeVORE:

Q. Mr. Palik, how many conversations did you have with Mr. Deeters concerning the matter of the Fields engineering? A. Two.

Q. And can you relate what happened on each of the occasions? A. Let me clarify my answer before I answer your next question.

There were two times sometime apart when I made inquiry in this connection. On each of these occasions I made a telephone call when I advised Mr. Deeters of the nature of the information that I desired. Mr. Deeters advised that he would have to search his records and would call me back, which he did, at which time information was given me over the telephone.

On the second occasion, the same, we went through the same routine. There was an initial telephone call from

[Tr. 1809]

me and a subsequent telephone call from Mr. Deeters in order to supply me with the information.

MR. NEWFIELD: Would you please read back the unanswered question?

PRESIDING EXAMINER: Will the reporter read the question back, please.

(The record was read by the reporter.)

MR. NEWFIELD: Mr. Examiner, I am going to object to the witness giving any information or response to the questions; they should be limited to the questions that I asked him, namely, about payment for the engineering work, first; and, two, any possible communications which may have been received by Mr. Deeters by telephone or otherwise from Mr. Fields.

MR. DeVORE: Mr. Newfield, if it will satisfy you, as far as I know there were no conversations between Mr. Palik and Mr. Deeters in relation to any other matters that you interrogated him about.

PRESIDING EXAMINER: Well, in order to avoid trouble, will you ask specific questions instead of making statements.

MR. DeVORE: Well, we do not want to put ourselves in the same position as Mr. Newfield has by asking leading questions. I want the witness' own words; I don't want to put words in his mouth.

PRESIDING EXAMINER: I did not expect you to. But a narrative statement could lead to extraneous matters of the

[Tr. 1810]

nature Mr. Newfield means.

BY MR. DeVORE:

Q. You were shown a check in the amount of \$170.60 dated August 7, 1957 by Mr. Newfield. Did Mr. Deeters, as a result of your telephone calls to him, advise you that the amount for the Fields engineering was \$170.60?

MR. NEWFIELD: I object to that as repetitious.

PRESIDING EXAMINER: It is repetition probably, but it is formulated somewhat differently, and I will overrule the objection.

THE WITNESS: The answer to the question is yes.

BY MR. DeVORE:

Q. To your knowledge, did Mr. Gladstone ever speak to Mr. Deeters concerning the payment for the Fields engineering? A. I am afraid I can't answer that. I don't have any clear recollection of it. If he did speak to him, it was certainly not in my presence.

Q. Did you convey the information received from Mr. Deeters concerning the amount charged for the Fields engineering to Mr. Gladstone? A. I did.

MR. DeVORE: No further questions.

MR. NEWFIELD: No further questions.

PRESIDING EXAMINER: You are excused, Mr. Palik.

(witness excused.)

[Tr. 1811]

MR. DeVORE: Mr. Examiner, in view of the testimony given by Mr. Frank Palik, I ask that FCC Exhibit No. 17 be received in evidence. You will remember that you reserved ruling on that exhibit because there had been no connection shown. I believe that has now been established, that we have established the connection between the check and the issues in this proceeding.

PRESIDING EXAMINER: Have you any objection, Mr. Newfield?

MR. NEWFIELD: No objection.

PRESIDING EXAMINER: FCC Exhibit 17 is admitted in evidence.
(FCC EXHIBIT 17 WAS RECEIVED IN EVIDENCE.)

MR. NEWFIELD: Mr. Examiner, since we have been going now for almost three weeks, I wonder if it might not be well to inquire generally about exhibits which have been identified, if there are any, and which are still not admitted into the record according to your records.

PRESIDING EXAMINER: Of the Commission's exhibits, my records show Exhibits 5 and 8 were rejected. Of course, this will show in the transcript when you receive it, Mr. Newfield.

Commission Exhibit 14 was admitted for a limited purpose only. Commission Exhibit 18, my records show, was rejected. All others were admitted.

* * * * *

PETITION FOR REHEARING

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 17,441

FILED JUL 29 1963

Nathan J. Paulson
CLERK

CHARLES P. B. PINSON, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

Appeal from a Decision of the
Federal Communications Commission

JOHN A. HANLEY

524 Florida National
Bank Building
St. Petersburg, Florida

Attorney for Appellant



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,441

CHARLES P. B. PINSON, INC.,

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Appellee.

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Federal Communications Commission

PETITION FOR REHEARING

**TO THE HONORABLE, THE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT:**

The Appellant, CHARLES P. B. PINSON, INC., presents this petition for a rehearing of the above cause and, in support thereof, respectfully shows:

1. The appeal in this cause was argued before this Court on May 9, 1963.

2. On June 13, 1963, this Court rendered its decision in favor of the Federal Communications Commission and against the Charles P. B. Pinson, Inc., affirming the decision of the Federal Communications Commission released July 30, 1962, and the Commission decision denying the petition for rehearing, reconsideration and stay, released October 25, 1962.

3. This Honorable Court entered its order granting this petitioner's motion for enlargement of time for filing a petition for rehearing until ten days from July 12, 1963.

4. That your petitioner, CHARLES P. B. PINSON, INC. respectfully requests a rehearing in the above entitled cause, and in support thereof submits the following grounds:

A. The Court has failed to consider or has overlooked the fact that the appellant was the licensee of existing licenses for a period commencing in 1953 to date, and that there must exist "compelling reasons to remove such existing licenses on the part of the Federal Communications Commission." (emphasis supplied)

B. The Court has failed to consider or has overlooked the argument of the appellant that the Federal Communications Commission can examine into the character qualifications of all applicants for licenses, but that the refusal to grant such licenses must be predicated upon substantial evidence contained in the whole record and may not be predicated upon presumptions, inferences or conclusions drawn from circumstantial evidence capable of other hypotheses than that drawn by the Federal Communications Commission in its refusal.

C. The Court has failed to consider the opinion in the case of In re Application of Standard Broadcasting Company, et al.,

29 F.C.C. 1129, pertaining to the question of alleged unauthorized transfer of control in relation to the facts of the matter presently before this Court.

D. The Court has overlooked the terminology of the findings and conclusions contained in the Initial Decision of the Hearing Examiner and the decision of the Federal Communications Commission inasmuch as both of these decisions reflect disagreement as to the basis of the alleged disqualifications of the licensee, but both found that the licensee should be disqualified as a punitive measure, contrary to the holdings in the case entitled Federal Communications Commission v. WOKO, Inc. (1945) C.A. D.C., 153 F.2d 623.

E. The Court has misconstrued the effect of testimony of Commission employee Gladstone, since Gladstone was called as a witness by appellant and was thereafter called as a witness for the Commission, and all testimony pertaining to the alleged activities of the appellant was introduced through said witness.

GROUND S

A.

The Court has failed to consider or has overlooked the fact that the appellant was the licensee of existing licenses for a period commencing in 1953 to date, and that there must exist "compelling reasons to remove such existing licenses on the part of the Federal Communications Commission." (emphasis supplied)

The factual situation surrounding this cause is involved, and capable of misconstruction and confusion by even the parties thereto. The Court, it is humbly submitted, must have been confused as to the

situations existing. It will be recalled that the appellant, Charles P. B. Pinson, Inc., was licensed by the Domestic Public Land Mobile Radio Service of the Federal Communications Commission for stations KIG 289, St. Petersburg, Florida, KIG 843, St. Petersburg, Florida, KIB 386, Tampa, Florida, KIN 652, Jacksonville, Florida, since 1953; that each of these licenses had been operated by appellant through its principal, Charles P. B. Pinson, individually; that he subsequently entered into a management agreement for station KIK 578, Tampa, Florida, with his father-in-law, James C. Fields.

The record is replete with testimony adduced at the time of the original hearings before the Hearing Examiner in Tampa, Florida, and Washington, D. C., in 1960, reflecting favorably upon the manner in which Mr. Pinson, as president of appellant, served the commercial areas for these stations to which it was licensed.

It was stated by the Hearing Examiner, as well as the decision of the Commission, that Pinson had established on the record that he had a reputation in his community for honesty and good character. It was the conclusion of the Commission, as well as the Hearing Examiner, that Mr. Pinson had made false statements for the purpose of influencing the decision of the Commission; that these conclusions were predicated upon acts and doings of Mr. Pinson in connection with the management of Station KIK 578, and had no connection with the manner of operations of stations which were duly licensed to appellant but which were subject to renewal in accordance with the regulations of the Federal Communications Commission.

The opinion of the Commission, as well as that of the Hearing Examiner, were inconsistent in their reasons as to the foregoing. The initial Hearing Examiner claimed that the statements and documents submitted by Pinson in support of his innocence were true at the time they were made. The decision, however, of the Commission made the conclusion that the statements were false at the time they were made,

both of which are predicated upon the same testimony and evidence. It is recognized that the Commission can overrule or disregard the findings of the Hearing Examiner, but it leaves in doubt the requirement that the refusal to renew existing licenses was not based upon compelling reasons as required in the following cases:

Federal Communications Commission v. WOKO, Inc., (1945)
C.A. D.C., 153 F.2d 623, which case was subsequently reversed upon certiorari to the Supreme Court, in 329 U.S. 233. In that case, it is stated, although reversed on certiorari:

"Where a broadcasting station has been constructed at considerable cost and has been maintained and operated to satisfaction of its listeners, it is normally in public interest that the station continue to operate and a renewal of its license should not be refused unless there exists as a basis for renewal 'compelling reasons' and these reasons must be such as bear on the interest of public or such as to have effect on its necessity or convenience."
(emphasis supplied)

Heitmeyer v. Federal Communications Commission, C.A. D.C.
(1937), 95 F.2d 91, in which it is stated:

"The Communications Commission is not bound by the examiner's finding but the Commission itself must make findings . . ."

It is further stated:

"The purpose of the Communications Act is to secure to the people of the several states and communities a fair, efficient and equitable distribution of radio service and the discretion which the Communications Commission is directed to exercise is not absolute."

In Evangelical Lutheran Synod of Missouri, Ohio and other States v. Federal Communications Commission (1939), C.A. D.C., 105 F.2d 793, at page 794, it is stated:

"Where a radio station has been constructed and maintained in good faith, it is in the interests of the public

and common justice to the owner of the station that its status should not be injuriously affected, except for compelling reasons." (emphasis supplied)

It is the contention of the appellant that the Court overlooked the requirement that there must be "compelling reasons" before renewal licenses can be denied. It is true as stated in WOKO, Inc. v. Federal Communications Commission, 329 U.S. 233, *supra*, that the Federal Communications Commission may properly refuse to renew a license of a broadcasting station when there is a deliberate misrepresentation to the Commission of its stock ownership. The factual situation surrounding this case does not reflect a deliberate misrepresentation. The misrepresentation, if any, was inferred by the Commission from a series of acts allegedly accomplished by the appellant and/or Mr. James C. Fields. It appears that the Court, in finding that the substantial evidence rule had been complied with, had failed to take into consideration the requirement of "compelling reasons" in approving the opinion of the Federal Communications Commission. Again, it must be brought to the Court's attention that the Commission arrived at this conclusion from inference drawn from testimony, and does not show a deliberate act or series of acts on the part of the appellant to mislead. It accordingly follows that the trial of the facts found the statements to be substantially true when made, and likewise found that the appellant was disqualified for reasons which were subsequently disavowed by the Commission.

It is therefore respectfully submitted that the substantial evidence rule has not been followed; that the actions are arbitrary and capricious; and that the Commission did exceed its power in finding the appellant disqualified as a licensee to operate.

B.

The Court has failed to consider or has overlooked the argument of the appellant that the Federal Communications Commission can examine into the character qualifications of all applicants for licenses, but that the refusal to grant such licenses must be predicated upon substantial evidence contained in the whole record and may not be predicated upon presumptions, inferences or conclusions drawn from circumstantial evidence capable of other hypotheses than that drawn by the Federal Communication Commission in its refusal.

C.

The Court has failed to consider the opinion in the case of In re Application of Standard Broadcasting Company, et al., 29 F.C.C. 1129, pertaining to the question of alleged unauthorized transfer of control in relation to the facts of the matter presently before this Court.

As stated in Ground A, the Court indicated in its decision that the appellant's contention is frivolous on its face in that the representations made by the appellant which constituted a violation of 47 U.S.C. 310B did not reflect upon the question of character. This contention of the Court is not supported by the argument and briefs of the appellant, and it is respectfully submitted that the Commission was correct if they found that there had been a deliberate misrepresentation concerning the procurement of control of Station KIK 578 by appellant Pinson. It is the contention of the appellant, based upon the opinion of the Federal Communications Commission, in the case of In re Application of Standard Broadcasting Company, et al., 29 F.C.C. 1129, that the element of control never passed from Fields to Pinson, Inc. The passing of the element of control was predicated upon numerous incidents pertaining to the management and operation of Station KIK 578. As a result of the testimony adduced concerning these instances, the Commission in its decision stated:

"The bureau while it agrees with the ultimate result, urges that the Examiner miscast the Fields and Pinson roles in the improper transfer of control. The Examiner apparently viewed Pinson's assumption of control of KIK 578 as resulting from Fields' unwillingness to assume responsibility for the station, whereas the bureau contends that Pinson used Fields as a 'front' from the outset with no intention that Fields ever have control over the station . . ."

Based upon the foregoing, a conclusion was thereafter made that the appellant wilfully intended to mislead the Commission. The ultimate decision is predicated upon conclusions and inferences or presumptions created from the foregoing testimony. In effect, it is an inference upon an inference, which is considered improper in arriving at and determining probative value. It is stated in I Wigmore on Evidence 428, as follows:

"§ 38. Degree of Probative Value required. It has just been seen that the general and broad requirement for relevancy is that the claimed conclusion from the offered fact must be a possible or a probable or a more probable hypothesis, with reference to the possibility of other hypotheses. This is not only the general principal that best describes the attitude of the Courts, but is also the expressed form of the test for specific kinds of facts."

It is further cited in the above authority, at page 429, as follows:

"1863. Bigelow, C.J., in Com. v. Jeffries, 7 All. 548, 566: 'To render evidence of collateral facts competent, there must be some natural, necessary or logical connection between them and the inference or result which they are designed to establish . . . It is sometimes difficult to mark with precision the line which separates the limits of just and reasonable inference from those of mere conjecture or surmise. This arises necessarily from the nature of indirect evidence. Being founded on the observation and experience of the mutual connection between facts and circumstances, the question of its competency is easy or difficult of solution according as such supposed connection is constant or more or less regular

and frequent. But as a safe practical rule it may be laid down that in no case is evidence to be excluded of any fact or circumstances, connected with the principal transaction, from which an inference to the truth of a disputed fact can reasonably be made.' "

It is therefore respectfully urged that the testimony adduced at the time of this hearing was capable of more than one reasonable hypothesis, that is, as to whether the element of control had in fact been transferred from Fields to Pinson, or whether Fields possessed the control required by regulations.

D.

The Court has overlooked the terminology of the findings and conclusions contained in the Initial Decision of the Hearing Examiner and the decision of the Federal Communications Commission inasmuch as both of these decisions reflect disagreement as to the basis of the alleged disqualifications of the licensee, but both found that the licensee should be disqualified as a punitive measure, contrary to the holdings in the case entitled Federal Communications Commission v. WOKO, INC. (1945) C.A. D.C., 153 F.2d 623.

The appellant respectfully calls the attention of this Honorable Court to the terminology of the findings and conclusions contained in the Initial Decision of the Hearing Examiner and the Commission. In each of these instances, the Hearing Examiner and the Commission have stated that the disqualification of Pinson was predicated "in view of the specific demonstration in this proceeding of a willingness to deceive a governmental regulatory body to achieve private ends." In this regard, the Hearing Examiner said

"Refusal to grant the applications of Charles P. B. Pinson, Inc. will unquestionably result in a loss of important communications facilities to the public. Although it is reasonable to expect that others will ultimately step in and provide these services

there is no assurance that such will occur and if so, at what point in time. In the instant circumstances, however, the more important public policy of protecting the integrity of the Commission's Rules and of the hearing processes must control. To hold otherwise would do violence to the regulatory concept and functions of the Commission and to the sanctity of administration of public affairs by administrative tribunals."

The foregoing is not a finding of misconduct on the part of the appellant based upon any direct act on the part of the appellant. It is true that the administrative process must be protected, but it is likewise true that the administrative processes are well protected by standards promulgated by the Congress. The guise of increasing the power of the administrative process predicated upon inferences and conclusions rather than on a direct showing of a deliberate act, would be forcing upon the public a greater burden than is required by the legislative process.

In fact, the acts of the Federal Communications Commission in this instance fall well within the terminology of Federal Communications Commission v. WOKO, Inc., 153 F.2d 623, which was subsequently reversed, as aforesaid. Although the final decision was reversed, the terminology of the original opinion should have some persuasive effect upon this Court in arriving at an equitable and fair conclusion.

"The Communications Act does not confer on the Federal Communications Commission any punitive jurisdiction, and a radio station license or its renewal may not be withheld in order to punish an applicant for violating the Act or a rule of the Commission."

The determination of the Commission in this case is, without question, punitive, and not based upon the conduct of the appellant in the operation of the licenses for which it is seeking renewal. The acts and doings of the appellant, if in fact Section 310B were violated as charged, were not such as would show a deliberate intent to violate the requirements

of the Communications Act. The Hearing Examiner, in paragraph 10 of his decision, states:

"Were the unauthorized delegation of control the only counterbalancing factor compensating considerations are presented. The degree of disclosure in the statements of March 17, 1958; the Commission action in thereafter granting the application for modification of construction permit; and the close relationship of the parties with the demonstrated unwillingness of Mr. Fields to assume responsibility for the station could be deemed mitigating factors indicating that the requisite responsibility placed in its licensees by the Commission could in the future be expected of Mr. Pinson and the corporate entity controlled by him . . ."

Accordingly, it is concluded and respectfully urged upon this Honorable Court that the Commission exceeded its duly designated legislative authority in rendering punitive measures upon this petitioner.

E.

The Court has misconstrued the effect of testimony of Commission employee Gladstone, since Gladstone was called as a witness by appellant and was thereafter called as a witness for the Commission, and all testimony pertaining to the alleged activities of the appellant was introduced through said witness.

It is respectfully submitted to the Court that the relationship of Mr. Gladstone to this matter was misunderstood. Mr. Gladstone testified as a witness for the appellant at the original hearings and was thereafter called as a witness by the Commission. The testimony adduced at both instances differed. The testimony of Mr. Gladstone definitely prejudiced this petitioner, and his testimony was definitely colored by virtue of the prior complaints made by Mr. Pinson to the Commission. It is true that the Commission exonerated Mr. Gladstone

as set forth in a letter released by the Commission on July 7, 1960, contained in joint appendix, pages 48 through 50; that the same is a document prepared by a party to this action for and on behalf of one of its employees and can at the most be considered only a self-serving document; that the petitioner complained of the activities of this Commission employee; that Mr. Gladstone was subject to cross-examination, and the attention of this Court is again drawn to the brief of the appellant indicating that the testimony of this witness was obviously prejudicial and that he added considerable weight and testimony throughout the entire hearing process. It is true that the credibility of witnesses is for the trier of the facts; that Mr. Gladstone did have statutory authority to make examinations, but it is likewise true that in making examinations and obtaining documents, the same must be obtained through normal channels; that permission to obtain documents of an official nature cannot be obtained through employees of a corporation without the specific authority of the corporation. The mere presence of Mr. Gladstone in the hearing room as a counsel, in view of his past actions, is reprehensible and contrary to the authorities cited by this Court. His testimony was of such a material nature that it constituted prejudicial error in permitting him to be present in the hearing room, and a doctrine of prejudicial error contained in the Administrative Procedure Act, Title 5 U.S.C.A. 1001 et seq. is involved.

CONCLUSION

Your petitioner therefore respectfully submits that a rehearing should be had and the decision revised as to both law and fact, as petitioner believes that a reexamination of the record, made by the Court after rehearing, wherein counsel will be able to assist the Court better to examine and understand the record, will result in a revision

and reversal of the decision herein; and that a miscarriage of justice will occur if this case is not reversed.

Respectfully submitted,

John A. Hanley

524 Florida National Bank Bldg.
St. Petersburg, Florida

Attorney for Appellant.

CERTIFICATE OF GOOD FAITH

I, John A. Hanley, counsel for the appellant herein, certify that the Petition for Rehearing filed herein on behalf of the Appellant, Charles P. B. Pinson, Inc., is presented in good faith and same is not tendered for any purposes of delay.

John A. Hanley

CERTIFICATE OF SERVICE

The undersigned counsel for Appellant, Charles P. B. Pinson, Inc., certifies that a copy of the foregoing Petition for Rehearing has been mailed by first class mail, prepaid, to Mrs. Ruth V. Reel, Counsel, Federal Communications Commission, Messrs. Max D. Paglin, General Counsel, Federal Communications Commission, and Daniel R. Ohlbaum, Associate General Counsel, Federal Communications Commission, Washington 25, D. C., this _____ day of July, 1963.

John A. Hanley



IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,441

United States Court of Appeals
for the District of Columbia Circuit

CHARLES P. B. PINSON, INC.,
Appellant,

FILED JUL 26 1963

Nathan J. Paulson
CLERK

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

OPPOSITION OF APPELLEE TO PETITION FOR REHEARING

The Federal Communications Commission, appellee herein, opposes the petition for rehearing filed by appellant Charles P. B. Pinson, Inc.

Five grounds are set forth in the petition as the basis for the requested rehearing. The first four grounds relate to matters which were fully briefed by the parties, and no further reply is deemed necessary. The same is true with respect to that portion of the fifth ground which relates to the charge that corporate documents were obtained by the Commission without the specific authority of the corporation.

Only to the extent that the petition (pp. 14-15) again raises the question of the propriety of permitting Mr. Gladstone to be present in the hearing room as Commission counsel, do we believe any further treatment is warranted. The Commission ^{1/} did not adequately brief this question in its main brief,

1/ Although the question was put in issue, it was treated somewhat sketchily in appellant's main brief (see pp. 27-31).

and we respectfully urge that the Court not only deny the petition for rehearing, but consider whether it may wish to revise the discussion of this point in its opinion.

We believe that the action of the hearing examiner in permitting Mr. Gladstone to remain in the hearing room as co-counsel for the Commission, although he was to testify as a witness in the proceeding, was a valid exercise of the examiner's discretion under the circumstances of this case. This was not the type of situation to which the Court referred in its opinion (p. 5) where an agency attempts to "circumvent the rule on witnesses by simply designating a witness counsel of record," but one where the witness had an important and valid function to perform at the hearing.

Mr. Gladstone was then the Chief of the Domestic Radio Facilities Division of the Common Carrier Bureau, the office which was responsible for the investigation of this case, and he had been responsible for the prior investigation. He was the person most thoroughly familiar with the background of the proceeding, and his attendance at the hearing was of substantial value because of the assistance he could give Commission counsel who presented the case for the Common Carrier Bureau (Tr. 83-88).^{2/} In similar circumstances in

^{2/} The transcript pages were not renumbered in preparing the record.

judicial proceedings it has been held not to be improper for the presiding judge to permit a government witness to remain in the courtroom throughout the trial, "because he had coordinated the investigation and was assisting the prosecution in presenting certain phases of the testimony and in the introduction of the various exhibits in proper order." Schoppel v. United States, 270 F.2d 413, 416, 417 (C. A. 4, 1959).

In other circuits where the question has arisen, the courts have consistently upheld the authority of the trial judge to excuse an officer of the United States from the rule on sequestration of witnesses, in order to permit him to advise counsel for the government. Johnston v. United States, 260 F.2d 345, 347 (C.A. 10, 1958), cert. denied 360 U.S. 935; United States v. Infanzon, 235 F.2d 318, 319 (C.A. 2, 1956); Portomene v. United States, 221 F.2d 582, 583 (C.A. 5, 1955); Powell v. United States, 208 F.2d 618, 619 (C.A. 6, 1953), cert. denied 347 U.S. 961.

On the basis of the foregoing authorities, it would appear that Mr. Gladstone's presence in the hearing room was not improper but, on the contrary, was in full accord with the practice followed in the Federal courts. It is respectfully urged, therefore, that the Court delete from its opinion the expression of disapproval of the procedure followed in this case. The Commission did not designate a witness as counsel merely to circumvent the rule on sequestration of witnesses, but only to permit the efficient conduct of the hearing.

In any event, Pinson suffered no prejudice by reason of Mr. Gladstone's presence in the hearing room prior to his testimony as a witness on behalf of the Common Carrier Bureau. As set forth in the Commission's brief (p. 25), Mr. Gladstone's testimony was corroborated by the testimony of witnesses who had been excluded from the room except when testifying. Moreover, the Commission's conclusion that Pinson lacked the requisite character qualifications to be a licensee is supported by documentary evidence as well as by the testimony of witnesses (J. App. 160-161). Since there has been no showing of an abuse of discretion or any prejudice to Pinson, the Commission's decision should not be disturbed. Johnston v. United States, 260 F.2d 345 (C.A. 10, 1958), cert. denied 360 U.S. 935.

CONCLUSION

The petition for rehearing should be denied.

Respectfully submitted,

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Federal Communications Commission
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July 26, 1963.

CERTIFICATE OF SERVICE

I, Herman I. Branse, do hereby certify that on this 26th day of July, 1963, I mailed true copies of the foregoing "Opposition of Appellee to Petition for Rehearing" to each of the following:

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